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LABOR RELATIONS PROGRAM

HEARINGS

BEFORE THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

EIGHTIETH CONGRESS

FIRST SESSION

ON

S. 55 and S. J. Res. 22

AND ALL OTHER BILLS AND RESOLUTIONS REFERRED
TO THE COMMITTEE HAVING THE OBJECT OF
REDUCING INDUSTRIAL STRIFE IN
THE UNITED STATES

PART 2

FEBRUARY 11, 12, 14, 15, 18, AND 19, 1947

Printed for the use of the Committee on Labor and Public Welfare



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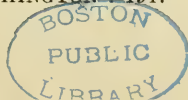
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Printed for the use of the Committee on Labor and Public Welfare



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LABOR RELATIONS PROGRAM

TUESDAY, FEBRUARY 11, 1947

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D. C.

The committee was called to order at 10:15 a. m., in the caucus room, Senate Office Building, by Senator Robert A. Taft, chairman.

Present: Senators Taft (chairman), Smith, Morse, Donnell, Thomas, Murray, Pepper, and Ellender.

The CHAIRMAN. The committee will come to order.

The first witness is Mr. Roth, president, National Federation of American Shipping, Inc.

You may proceed, Mr. Roth.

STATEMENT OF ALMON E. ROTH, PRESIDENT, NATIONAL FEDERATION OF AMERICAN SHIPPING, INC., ACCOMPANIED BY RICHARD ERNST, COUNSEL

Mr. ROTH. Mr. Chairman, and members of the committee; I am the president of the National Federation of American Shipping Inc., which comprises in its membership approximately 90 percent of the oceangoing shipowners' organizations and companies of the United States.

I shall also base my observations, in part, on my experience as an industry member of the War Labor Board and former president of the San Francisco Employers' Council, where we have had considerable experience in community-wide industry bargaining.

The council represents some 2,000 employers, engaging sometimes in direct collective bargaining on behalf of employment and in some instances, only as a clearinghouse for research and coordination of labor relations in the city of San Francisco.

Because of the importance of noninterrupted oceangoing traffic and its services to the national economy and the difficulties of maintaining that service without interruption, I shall ask the committee to bear with me while I give you some of the background of our industrial relations in shipping.

We have had a very long experience in shipping, with collective bargaining, and I think that the members of this committee know that we have had a great many interruptions and stoppages of that service.

There are certain operating conditions in shipping which pertain only to that industry and which I think are not common to other

industries, which conditions I should like to point out before I go into the measures before this committee.

We are particularly vulnerable to work stoppages for this particular reason—we have to draw all our labor personnel for the ships and on the shore from unions. Our seagoing personnel consists of skilled and semiskilled employees who are certificated and licensed by the Government.

Not only that, but the Government also prescribes the number of men we must have on the vessel before we can sail that vessel out of the port. You can readily observe what difficulties we encounter as a result of those limitations.

On the west coast a ship operator has to deal with seven off-shore unions, in order to man a vessel; he has to deal with some nine unions in the course of his on-shore operations.

That means that at all times we have to have 26 unions entirely satisfied, or as satisfied as possible, or our vessel is tied up because any one of these unions, if collective bargaining breaks down, can, by the simple expedient of putting out a picket line, completely stop the operations of the vessel.

In fact, it may even completely stop the operations of the port, or even national operations, as occurred last year when the Sailors' Union of the Pacific succeeded in tying up the entire shipping industry in protest against a ruling by the Wage Stabilization Board.

In that case, there was no dispute between the employers and the unions; they had reached an understanding concerning working conditions, but the Sailors' Union of the Pacific contested the Wage Stabilization Board's ruling, put out picket lines, and all of the maritime unions refused to go through the picket lines. As a result we had a national tie-up.

On the Pacific coast, the ordinary vessel would have on it three A. F. of L. unions; three CIO unions, and one independent union. You can readily see why we have some difficulties, from the standpoint of jurisdictional disputes in the shipping industry.

Now, further to complicate this picture, on the west coast we deal with the CIO longshoremen's union, and on the east coast we deal with the A. F. of L. longshoremen's union, the ILA.

Obviously, the tendency, of course, is for each of those unions to protect its affiliates among the unions that man our ships, and, therefore, we are often confronted by a refusal among the longshoremen to handle the cargo, in sympathy with some dispute with one of the oceangoing or offshore unions.

The CHAIRMAN. What are the seven unions for ships on the Pacific coast?

Mr. ROTH. There is the Sailor's Union of the Pacific on the Pacific coast, affiliated with the A. F. of L., which represents the ordinary seamen on the vessel and the deck crew.

There is the Marine Firemen, Oilers, Watertenders and Wiper's Association, which is an independent union.

There is the union of Marine Cooks and Stewards. That is a CIO affiliate, which represents, as the name indicates, the cooks and stewards.

Then, there is the Marine Engineers Beneficial Association, representing the engineers, which is a CIO affiliate.

There is the Masters, Mates and Pilots Union, an affiliate of the A. F. of L.

There is the American Communications Association, which is a CIO union.

Then, we have the American Merchant Marine Staff Officers Association, an association which represents our pursers; that is an A. F. of L. union.

Senator THOMAS. Are the pursers organized?

Mr. ROTH. They are, on a number of vessels; not on all of them.

As a further complication to this picture, we have the interest of the Government in shipping. At the present time the relationships are, to a large part, being influenced by the fact that many of these ships are still owned by the Government and have not been returned to private operation.

Throughout the war, of course, shipping was entirely operated for the account of the Government. Decisions as to wages, hours, and working conditions were and still are being influenced by governmental agencies.

In other words, the shipping companies are not free agents in collective bargaining, in the sense that most industries are.

The domestic trade, our intercoastal ships and our coastwise ships are still being operated for the account of the Government.

Offshore, a great many vessels are now chartered from the Government. The rate of delivery has been retarded by the inability of the shipyards to make reconversions and repairs, and there are a number of other difficulties involved. So, it is apparent that for quite some time the Government will be in the picture.

During this last war, of course, it has been very definitely in the picture, and it was necessary for the employers to secure the approval of the Wage Stabilization Board, the War Shipping Administration, and of other agencies with regard to agreements and contracts with the unions, and settlements of disputes.

The unions have done pretty well as a result of that.

Incidentally, our wage level has increased during the war by a percentage of 150 percent, as compared to 90 percent for manufacturing generally.

The CHAIRMAN. There has been, you say, an increase of 150 percent in shipping as against about 90 percent in the manufacturing industries?

Mr. ROTH. That is right. So our wage rates now are way up higher than they have ever been, and at a greater rate of acceleration than other industries have had.

Senator THOMAS. Your rates, however, were rather low, were they not, several years ago? That is, the creation of the merchant marine law raised your rates, when that law came into existence in 1938 or 1939?

Mr. ROTH. That is right. They were low in 1937. The act was adopted in 1936.

Senator THOMAS. And that law has helped toward the bringing up of the abnormally low wages which formerly were in your industry?

Mr. ROTH. They were abnormally low during the depression in shipping and clear up to 1937; there is no question about that, that they were low.

However, since the beginning of World War II the earnings have increased from \$105 for able-bodied seamen to \$254.86 a month. It was around \$70 a month in 1937.

Senator THOMAS. You have statistics comparing the rates up to the present time?

Mr. ROTH. We do have statistics. I will submit a chart showing the rates for the record.

(The chart referred to follows:)

Trend of maritime wages

	Before war, 1938	1939	1940	1941	December 1941 - February 1943	March 1943 - March 1944	April 1944-June 1945	July 1945-September 1945	October 1945	June 14, 1946	Oct. 26, 1946
Chief officer:											
Basic.....	\$190.00	\$190	-----	-----	\$243	\$242	\$249	\$247	\$296	\$314.00	-----
Overtime.....	19.00	19	-----	-----	86	79	101	111	99	140.00	-----
Bonuses.....		40	-----	-----	199	228	203	138	20		-----
Total.....	209.00	249	\$281	\$352	528	549	553	496	415	454.00	-----
Able seaman:											
Basic.....	72.50	73	-----	-----	100	100	100	100	145	162.50	\$172.50
Overtime.....	7.50	7	-----	-----	42	44	46	49	44	82.34	82.30
Bonuses.....		25	-----	-----	103	112	116	76	21		-----
Total.....	80.00	105	122	162	245	256	262	225	210	244.84	254.80
Ordinary seaman:											
Basic.....	55.00	55	-----	-----	82	85	83	83	132	150.00	-----
Overtime.....	6.00	6	-----	-----	48	36	43	45	41	80.00	-----
Bonuses.....		24	-----	-----	103	109	116	76	20		-----
Total.....	61.00	85	104	142	233	230	242	204	193	230.00	-----

Senator ELLENDER. Mr. Roth, with such higher rates, are you able to employ as many men to operate a ship as you had back in 1937, when you paid them only \$70?

Mr. ROTH. Before the war it was always possible to obtain the men to man the ships.

The CHAIRMAN. No; he does not mean that. Do you have fewer men?

Senator ELLENDER. That is what I meant.

Mr. ROTH. No. As a matter of fact, we have more men, Senator. The manning requirements have been more severe; they have increased the number of men we are required to employ on shipboard, rather than cut down the crews.

I was just coming to that. The Government regulations prescribe not only the qualifications of a ship's crew, but they also fix minimum manning requirements by various classifications.

They fix the classifications that you have to put on the ship in order to operate that vessel and obtain permission to operate it. You are prohibited from sailing that vessel unless it has on board the number

of crew members in various classifications which is required by Government regulations. Those requirements have increased over the years the number of men required.

Senator ELLENDER. To what extent has that manpower condition been pertinent? Have your rates increased because of the higher wages for carrying freight?

Mr. ROTH. Our rates are up now, due to the fact that there is a shortage of tonnage around the world.

Even so, that only applies to the international trade. In the domestic trade, we have not been able to secure rate increases to meet the costs.

That is why, Senator, there are pending before the ICC at the present time proceedings resulting from a petition instituted by the War Shipping Administration requesting an adjustment of rates.

We are blanketed by the umbrella of railroad rates, and unless the railroad rates come up, then we are not in a position to increase ours.

The ICC, after a delay of 9 months, has indicated that it will take jurisdiction over the matter.

There is pending or will be pending before the Congress a resolution extending the authority of the Government to operate ships in the domestic trade. Unless the Government has that authority extended, most domestic operations will cease on March 1. Private industry is in no position to assume these additional costs under the existing rate structure.

Senator MORSE. That ends March 31?

Mr. ROTH. That is right, Senator. That is a very critical situation, because the country is facing one of the most acute shortages of transportation facilities, water-borne, in its whole history.

You can realize that the extent to which the water-borne industry cannot carry goods from coast to coast will, of course, lead to a very acute shortage of railroad freight facilities; the railroads will have to carry more goods.

That matter is now pending, and it will be before the Congress shortly. The President has recommended that that authority be extended.

That whole thing stems from our inability to pay these increases under the present rate structure.

Senator ELLENDER. Are we to understand that there is very little coastwise trade at the moment because of that?

Mr. ROTH. There is little coastwise trade by either Government or private industry. The losses are so great that coastal operations have largely been abandoned.

Senator ELLENDER. Well, what has become of the ships formerly so utilized?

Mr. ROTH. At the present time, there is actually a shortage of ships to handle the world's commercial requirements. This shortage in tonnage for world commerce is due largely to the demand for supplying feed and coal for the European countries.

Senator ELLENDER. And they, I understand, use ocean ships.

Mr. ROTH. That is right. We have an abnormal demand for international trade.

Senator ELLENDER. I mean, those coastwise ships, formerly so utilized, are not being used for ocean ships.

Mr. ROTH. Many coastal ships were lost in the war.

The CHAIRMAN. However, I saw about a thousand ships tied up.

Mr. ROTH. That is right. There are immobilized some 2,000 ships, Senator.

Our difficulty is to get those ships out and get them into operating condition. We do not have the shipyard facilities at the present moment to repair and reconvert those vessels.

There are actually pending before the Maritime Commission applications for more than 160 ships for charter, and ships are not available—I mean, ships in condition—to meet the demand at the present time.

Senator ELLENDER. These 2,000 ships that you just referred to are slow Liberty ships; are they not?

Mr. ROTH. Yes, but even so, Senator, the fast ships, like the ones that the Army and Navy had, require reconditioning. It is necessary to reconvert them for commercial operation.

Senator MORSE. As you say, we have quite a problem with the Maritime Commission, both from the standpoint of chartering and selling vessels. That is, if we could work out a more speedy arrangement with the Maritime Commission, there are concerns who are ready to take over some of these ships, either by charter or purchase. Is that not true?

Mr. ROTH. I would like to report that within the last 24 hours, we have had a joint committee from the Federation working with a joint committee of the Commission trying to develop and work out some of the difficulties which have retarded utilization of these vessels.

It is a tremendous job to reconvert our passenger ships. The Matson Co. has, for instance, four big passenger ships which are costing \$6,000,000 each to reconvert to service.

Senator MORSE. As a contribution toward the solution of this problem, I might suggest that the Maritime Commission could be more helpful by way of assisting American shipping interests to get surplus ships from the Government, just as our Government has, in other respects, been very helpful to other countries, aiding them in getting surplus property at a very low cost. If the Government would help our shipping companies, that might be of some value to the transportation system of our country.

Mr. ROTH. Your point, Senator, is very well taken. There are ships in the possession of foreign countries which we could use for our own needs.

There is pending in the House of Representatives now a joint resolution which would require the return of some 300 vessels still under lend-lease to Great Britain.

Senator MORSE. Also, as an illustration, we could take the tanker situation. Tankers are sorely needed in this country. The oil companies could use the tankers, and they need them very quickly. They should be able to get them at very reasonable rates.

If those tankers were available to our companies on the west coast, then we would not have this very serious threat of an oil shortage on

the Pacific coast, particularly in the Northwest, which is due to the fact that there are no tankers to move that oil up there.

Mr. ROTH. Of course, we must realize that many of these ships that are now in sanctuary are ships that took a terrific beating during the war and they are not suitable for commercial operations. They must have a great deal of work done on them before we can use them.

The CHAIRMAN. Mr. Roth.

Mr. ROTH. Yes, Senator.

The CHAIRMAN. At the present cost of operation to American shipping, does American shipping have any chance to compete with, say, British shipping, for world trade, international trade, without subsidies?

Mr. ROTH. I was just about to come to that point, Senator.

The CHAIRMAN. All right, proceed.

Mr. ROTH. I was going to point out the disadvantages that we have in foreign competition.

Before I do that, however, I would like to make this point, if I may, that in our industry it is absolutely impossible to operate if a picket line is put out. Once a seaman has attached to him the appellation of "fink" or "scab," which means that he is working or has worked behind a picket line, then his opportunities for employment from then on are nil, he becomes a marked man.

As a result of that condition in the shipping industry, we are very vulnerable to tie-ups. I can give you a very ridiculous example. I recall one example in San Francisco concerning three big ships in the Luckenbach Co.

Those ships were tied up because of a single radio operator on a vessel who had a personal grievance. Now, this man went out and picketed alone.

When he went out to lunch, he put up a sign which said, "Picket gone to lunch, will be back at 1:30."

Now, believe it or not, nobody would cross that imaginary picket line and work. I realize that that sounds ridiculous, but that is a fact, and it shows how vulnerable we are to stoppages in the shipping industry.

Senator MORSE. Not only that, but you introduced the "ghost" picket lines, in Portland?

Mr. ROTH. That is right, we were faced with the "ghost" picket lines there. A variation of ghost picket lines is the "hot cargo" technique. To illustrate. In order to force an employer to recognize a particular union in the city of San Jose, union officials in San Jose merely wrote, "hot cargo" upon the sides of nine cars of pears. When the pears reached San Francisco, the longshoremen refused to handle those pears.

There was not even a picket line; there was, however, a constructive picket line, which consisted of the words "hot cargo" upon those nine cars of freight, and that constructive picket line was just as effective as a physical picket line.

You can judge why we support the provisions in the bill before you which outlaws secondary boycotts.

Senator ELLENDER. What would you say was the cause of such examples as you are talking about now?

Mr. ROTH. Well, for one, the inability to enforce contracts and the inability to enforce awards of arbitration that are entered into. Also, the inability to maintain union responsibility.

Senator ELLENDER. There has not been a question of wages or working conditions, or anything like that?

Mr. ROTH. There has not been, for the past 3 or 4 years. Our wages, generally, are the highest in the world, bar none, and higher than most other industries in the United States today.

Senator ELLENDER. I presume that you are also troubled a great deal by jurisdictional and sympathetic strikes.

Mr. ROTH. Certainly, and I will point that out when I come to those sections of the bill in the course of my statement.

Stability in labor relations is a matter of prime importance to shipping. Shippers, obviously, will refuse or refrain from sending their goods by ship because of fear of tie-ups. There has to be dependability of service before you can get that shipping.

In the hearings before the ICC, for instance, one of the big shippers testified that he had \$1,500,000 of canned goods on our docks that had been tied up for 30 days. He said it was not so much a question of rates as dependability of service which influenced him. He was willing to pay higher rates if he could get his goods delivered.

This lack of confidence in our ability to continue our operations or deliver goods at a certain time has been one of the deterrents in our industry.

Furthermore, unfortunately for us, foreign competitors, eventually, will have better ships than we have. That is because they are building modern ships.

Also, those foreign competitors have a much better record with regard to stability. For example, they have not had a serious strike of oceangoing unions in Great Britain for more than 20 years. Compare that against our record, and you will see why even our own domestic shippers will prefer the foreign lines, from the standpoint of dependability of service, and they will continue to prefer our foreign competitor unless we can find some answer to this problem.

I say this advisedly, but I seriously believe that unless we can assure the shippers that there will be a greater stability than we have had in the past, then our maritime service, our merchant marine, is going to fall into the same state of decadence as it was in after the last war.

When you compare the stability that they have with our lack of stability and when you also compare the wage rates that they have with our wage rates, concerning which Senator Taft asked, you can see how serious our competitive problems in the field of overseas services are.

As an example, on the typical Liberty ship which requires crews of about 44 men, our monthly wage bill is \$11,500.

The next highest cost, and this may surprise you, is for Greek ships, \$6,300. Their wages have gone up greatly since the war.

The cost for Great Britain, which is our greatest competitor, and the foremost maritime nation in the world is \$4,300 per month, compared to our cost of \$11,500 for the American-operated Liberty ship.

Under the Norwegian flag, another important maritime nation, the cost is \$4,200. For the Netherlands, it is \$4,000.

Senator ELLENDER. Do they have as many men to operate their ships as the American ships have?

Mr. ROTH. The manning scale is about the same. However, I was told by an operator in New York in the past month—he is an operator under the Greek flag—that he plans to operate his Liberty ships with only 33 men. Now, there, of course, they have a differential of 10 less men than we have.

Now, coming specifically to measures which relate to our situation—

Senator ELLENDER. Pardon my interrupting, but do you have those figures by nations in the record?

Mr. ROTH. It is in the record; it is in the statement, Senator.

We favor the establishment of an impartial and independent Federal conciliation and mediation agency, along the general lines which S. 55 provide. However, we do have some question about one or two things in that bill.

We differ from that bill in that we think the Conciliation Service should be taken out of the Department of Labor. We believe that the Conciliation Service should be not only strictly impartial, entirely impartial; we believe that it is important that not only must it be impartial, but that it must be so regarded by both the employers and the employees.

We believe that is very important, that it be so regarded by both the parties, because it is a voluntary process and if it is to work, it must have the confidence of both the parties involved.

I think that I can state without any fear of inaccuracy from my own experience, that the larger number of employers in this country do not regard the Conciliation Service of the Department of Labor as an entirely impartial agency.

We do not believe that the Labor Department, with the best of intentions, can serve in a purely impartial capacity.

We feel that the Labor Department is regarded as a protector of the interests of labor. That is because under the statute one of its functions is to promote the welfare of labor.

Furthermore, the conciliators from the Department of Labor have been drawn largely from the ranks of labor unions. The personnel has been, to a great extent drawn from persons with a very strong union background.

Although figures upon this point have never been made public, I believe that as high as 80 percent—and I have this on good authority—as high as 80 percent of the conciliators in the Labor Department held at some time or still hold union affiliations.

Now, in all fairness to Mr. Warren and in all fairness to the Department of Labor, I think that they are making an effort to reduce the number of individual conciliators who have had, or still have, union affiliations, but I think it is safe to say that the majority of them still are men drawn from the ranks of labor. Those men cannot be regarded as impartial, by the widest stretch of the imagination.

We know from long personal experience how they work. The conciliator who arrives at the job endeavors to find out what the union

wants. He learns the union's minimum demands, and then he proceeds to exert pressure upon the employer to accede to these demands, or even force him to grant them.

The unfortunate thing is that in collective bargaining we have a situation where the unions are matching us for our neckties. I recall an incident of a fellow who said to me once, "I will match you for your necktie."

I said, "What do I get if I win?"

He said, "Well, you keep your necktie."

Now, that is the way collective bargaining works.

We are trying to keep what we have. The awards do not take anything away from the employees.

To illustrate how conciliators worked in 1946, I will give you an example.

The Conciliation Service attempted to force the employers to agree to a closed shop for the licensed officers on ships. They exerted pressure by going to the Maritime Commission and asking them to take away all ships from employers who refused to comply with the union's demand.

You can understand that it is necessary for us to be able to select or discharge our captains and our other officers, but this union——

Senator MORSE. May I interrupt, Mr. Chairman? I would like to ask this witness a few questions about the Conciliation Service.

The CHAIRMAN. Yes.

Senator MORSE. Because I think Mr. Roth is one of the very best industry witnesses that we could possibly have to advise this committee on conciliation.

I have sat across the table from him in various capacities over the years, and I have the very highest respect for his judgment.

The CHAIRMAN. Proceed, Senator.

Senator MORSE. Mr. Roth, were you a member of this Labor-Management Conference that was held some years ago, when the President called labor and management together for a conference held in this city?

Mr. ROTH. I was.

Senator MORSE. Was it true that at that conference there was a considerable amount of discussion on this problem of the future of the Conciliation Service?

Mr. ROTH. There was a great deal of discussion. I was not on that particular subcommittee, but I am familiar with the discussion.

Senator MORSE. You are familiar with the discussion.

Now, is it true that certain of the management representatives took the position that you have taken in your testimony this morning, that the Conciliation Service should be separated from the Department of Labor?

Mr. ROTH. It is true.

Senator MORSE. Is it true that, as a result of that discussion, the so-called compromise agreement was worked out, whereby, for a time, management would go along with the proposal that an advisory committee consisting of management representatives and labor representatives be appointed to advise with the Department of Labor upon the Conciliation Service?

Mr. ROTH. That was the arrangement. In fact, it has been carried out.

Senator MORSE. Such a committee was appointed?

Mr. ROTH. That is right.

Senator MORSE. You are not a member of that committee?

Mr. ROTH. I am not a member.

Senator MORSE. Have you in any way kept yourself in touch with the work of that committee during the years?

Mr. ROTH. Well, I have not been directly engaged in labor relations for the last 2 years, and have only recently been drawn back into it.

It is my impression, from what I have read in the press, that that committee has accomplished something by way of increasing the efficiency of that Department.

However, I do not think that the Department is yet in a position to render conciliation service in a way satisfactory to employers in the United States.

Senator MORSE. That was what my next question was going to be; I will put it this way.

Do you have any reason to believe that American management—that is, that segment of American management that does not favor conciliation service coming from the Department of Labor—do you believe that it has changed its views as a result of the work of the advisory committee?

Mr. ROTH. I do not believe they have. We certainly have not changed in the shipping industry, because we have had experience, and we do not like the experience which we have had under the present regime. I am speaking about lately; October and September of last year.

Senator MORSE. You mentioned, I believe in your statement, Mr. Roth, although you were speaking rather rapidly, that in fairness to Mr. Warren, you think an attempt has been made to improve the personnel of the Conciliation Service.

Now, are you at all familiar, or do you have any knowledge of your own with the record of the men who have been both dismissed and hired during the past year?

Mr. ROTH. I have not, sir. I have not had contact with it.

Senator MORSE. Do you know of your own knowledge whether or not it is true that he has taken in under his staff a group of young staff members from the old War Labor Board who themselves have had no experience in the field of conciliation? Do you know whether or not he has hired them and displaced men who have had experience, years of experience, in conciliation?

Mr. ROTH. I have read that that is so. I do not know.

Senator MORSE. Are you familiar, Mr. Roth, with the——

Mr. ROTH. I think, Senator, in fairness to Mr. Warren and his Department, that it should be pointed out——

Senator MORSE. Well, now, Mr. Roth, I am desirous of being fair to Mr. Warren, but I want this committee to thoroughly investigate the administration of the Conciliation Service. That is the reason I am bringing up these questions.

Are you, Mr. Roth, familiar with the basis of the statistics of the Conciliation Service? I refer to those reports, for example, in which they will say, "During the past year we have participated in so many housing labor disputes in this country."

Mr. ROTH. I am.

Senator MORSE. You are familiar with those reports?

Mr. ROTH. I am.

Senator MORSE. Do you know how much participation the conciliator has to engage in a case in order to have that particular case listed on the so-called notch-in-the-gun record of the Conciliation Service?

Mr. ROTH. I think they are drawing a pretty wide bow on those things in their claims.

I could illustrate it from one case in San Francisco, where we settled a dispute in spite of the efforts of the conciliation's man to break up the employer group—the solidarity of employers in that particular dispute. Yet they claim credit for settling that particular dispute.

Senator MORSE. Or, if they called you on the telephone and asked you if it was true that a certain dispute has arisen, and you replied, "Yes, it has arisen, but an arbitrator is handling it." would that case go on their list too?

Mr. ROTH. I am not sure it would. I am sure any case in which they had actually appointed a conciliator and which was settled would be listed as an accomplishment of the Labor Department.

Senator MORSE. They would list it as one of their accomplishments if, for example, they had an observer sitting in on one of your west-coast arbitrations?

Mr. ROTH. That is right.

Senator MORSE. In view of all of that, I do not think that I am being particularly unfair when I suggest that the statistical reports of the accomplishments of the Conciliation Service need to be pretty carefully analyzed for results. Is that correct?

Mr. ROTH. I think that is true, Senator. I also think from your broad experience in our industry on the west coast, that you know of your own personal knowledge of cases where settlement clearly was not due to the Conciliation Service, but where it was claimed to have been settled by them, whereas in fact it had been settled by our established arbitration machinery.

Senator MORSE. I am sorry to have taken up so much time.

The CHAIRMAN. It has been very interesting.

Senator MORSE. If and when we go into the Conciliation Service and make an investigation, here is a man who can certainly come forward with actual experience in the field of labor relations on the west coast and who can certainly justify the contention I am making here, Mr. Chairman, that it is about time that the Conciliation Service was thoroughly investigated.

Mr. ROTH. We favor strongly the development of voluntary arbitration, and our contracts have gone a long way toward establishing machinery for voluntary arbitration. On the west coast we have established permanent machinery, on a coast-wide basis, for the adjudication of disputes which arise out of the interpretation of contracts.

We have never delegated, however, to the arbitrator the authority to make our contracts. Either side would refuse to do that, I think.

However, this machinery has certainly had the authority to adjudicate disputes; however, the awards have often been disregarded. On the whole, as far as the adjudication goes, I think that it has operated to the benefit of the industry.

Now, on the east coast, we do not have such an arrangement, but we do have in our contracts provisions for the voluntary arbitration of disputes arising from interpretations of contracts.

I would like to report before this committee that at this moment we have in process on both the east coast and the west coast voluntary arbitration proceedings to adjudicate demands for increased wages under contracts opened January 1.

The demands of the cooks, stewards, the firemen and radio operators on the west coast are now being arbitrated, as are the demands of the NMU, which represents unlicensed personnel on the east coast.

However, we are opposed to compulsory arbitration for the following reasons: For one thing, we think that some issues are too vital to be submitted to compulsory arbitration, or cannot be submitted, because neither party is willing to risk the chance. Neither party feels that it can afford to run the risk of a decision by someone who is not thoroughly familiar with the problems of the industry pertaining to certain vital issues.

We have refused on the west coast to arbitrate the issue of a closed shop for licensed officers. We think that is so vital to the industry, this right to choose and discharge our commanding officers and certain other officers, that we cannot afford to submit that issue to arbitration.

We have learned from bitter experience that arbitration awards upon basic issues sometimes have dire long-time results upon labor relations in the field of shipping. We think that most of the difficulties that have been inflicted upon the industry on the west coast are due to the fact that the longshoremen were awarded a hiring hall in 1934. Ever since this hiring hall was established, the longshoremen have used it to destroy any loyalty between employers and employees.

Senator MORSE. Mr. Chairman, I would like to ask Mr. Roth a question about the closed-shop issue.

Mr. ROTH. I am going to discuss that, Senator, but if you have questions, go ahead, please.

Senator MORSE. It is also your position, as I recall over the years, that, as a legal proposition, the closed shop is not an arbitrable issue, and that that position is based upon freedom of action in the making of contracts, which, of course, is based upon a voluntary arrangement between two parties by collective bargaining, rather than compulsion in the form of arbitration.

Mr. ROTH. That is right.

Senator MORSE. I recall those cases in which you were associated, and that legal point of view.

Mr. ROTH. I think that it is sound.

Senator MORSE. I think that it either means the common use of free collective bargaining, or it has no legal standing; therefore, it is not, in fact, arbitrable, the closed-shop issue, as a proposition of law.

Mr. ROTH. Our point, immediately, however, is that we think it is better for the public in the long run—well, let me follow up with

regard to that issue to the results of the granting of that hiring hall in 1934, rather than submitting it to arbitration. The longshoremen in San Francisco and all along the west coast have used that hiring hall to secure complete control by the union, not only of the individual longshoremen's job but the selection of the men to do the work.

Now, this has resulted in several things. For example, they have resorted to methods of systematic slowdowns. For example, it takes five men to do the work of three men in many jobs. It actually costs more now in some instances to pick up the cargo from trucks and move it in and out of the vessel than it does to transport that cargo on the vessel.

That is one of our great difficulties in competition with the railroads. In the foreign field the foreign competitor has the same costs in our ports, but where we have a triangular competition—where we have ships originating their cargo in England and taking it to the River Platte, in competition with products from the U. S. A.—then we have this higher cost to us, whereas it is not a cost to the English shipper. These excessive costs are largely due to this systematic slow-down, with which Senator Morse is very familiar.

Senator PEPPER. May I ask Mr. Roth a question?

The CHAIRMAN. Surely, Senator.

Senator PEPPER. I am interested in this. Would you just tell us a little bit more in detail why it is that you say it takes five men to do the work of three men? What is it that the union does that deliberately makes the work less efficient?

Mr. ROTH. Yes; I will be very glad to answer that. They have demanded, for time to time, that the number of men that comprises the gang that does the work shall be increased; that, of course, adds to our cost.

Now, their method of enforcing that has been to refuse to load the individual vessel. As a result of that, they have forced employers individually in the past to increase the number of men in that particular operation.

Another technique has been to limit the number of articles that can be put on the slings. Specifically, they limit the number of sacks of cement that can be put into the slings; that is limited to 22.

Now, the Navy during the war loaded ships without that limitation and with fewer men to the gang at one of its piers and the output was increased more than 100 percent over the union output.

Frankly, the underlying philosophy for this whole program is to create more work for more men. That is what underlies the system. You see, they had in times past a surplus of longshoremen looking for work. Philosophically speaking, that is the point; they are trying to distribute the work by making sure that each man does less per hour, and that has been most effective.

I can give you an example which I think it is safe to use. At a dock where we handled sugar which came from the Hawaiian Islands, the number of sacks per gang per hour at one time, amounted to over 2,000 sacks.

The longshoremen put men watching the work, men with stop watches, and they had stewards to make sure that no man would do

more than so much. In that manner they reduced the quantity to as low as 1,000 sacks per hour.

I took that matter up with Mr. Bridges.

I got nowhere with Mr. Bridges until I pointed out that we would be forced to handle sugar in bulk instead of sacking it and many long-shoremen would lose their jobs as a result.

Through that appeal to self-interest they did something. They got the production up to about 1,600 sacks per hour where it remained for a very short time.

During the war, believe it or not, production dropped below 750 sacks per hour, due to intentional restrictions on the output.

There are so many ways that they can curtail output. They can refuse, for instance, to permit us to unload the cargo from the tailgate of the trucks directly upon the sling board. They have made us unload it on the floor of the dock and pick it up in a second operation and put it upon the sling board.

We had the port of Seattle tied up on that issue; and Joseph Kennedy, who was chairman of the Maritime Commission at that time, came out and arbitrated. I can assure you that he had some caustic things to say to the unions about that practice.

There are innumerable ways. One of the most serious is the refusal of the men to handle cargo unless the jitneys and trailers are employed in numerical rotation. They will mark out a place on the dock for each jitney—one, two, three, four, five—and No. 4 jitney will not pick up any cargo until No. 3 has returned for its load, irrespective of how far No. 3 had to go with the cargo. I can give you any number of instances of how these arbitrary restrictions have increased our costs.

Personally, I signed a contract on behalf of the Employers Association on the Pacific, which arbitrarily fixed the size of the sling load. We did it not because we believed it was a good practice, but because Mr. Bridges had the power to force the size of the sling load down and down.

Senator PEPPER. What figure did you fix upon?

Mr. ROTH. We set it at 2,000 pounds; it already was as low as 1,800 in many operations. Mr. Bridges said quite frankly that "while it was true that the employers had the right under the contracts to direct the work—I have got the actual power to direct, and I will force it down." That contract plagued us, and it is still plaguing us.

Senator PEPPER. I do not want to interrupt you, but I have another question of you, Mr. Roth.

Mr. ROTH. Yes, Senator.

Senator PEPPER. What is a fair figure, in your opinion, taking into consideration honest work and efficient work? What is a fair figure?

Mr. ROTH. I would say that, generally speaking, 2,800 or 3,000 pounds a sling load; that would be 28 or 30 sacks of 100 pounds weight.

Senator PEPPER. Do they reduce that because they claim it might be unsafe?

Mr. ROTH. It is not unsafe. They argue that it is, but it is not. The Navy proved that during the war when they took off the restrictions in a test.

Senator PEPPER. Do you have any arrangements in these contracts to arbitrate a matter of that sort, when there is a difference of opinion as to what is a speed-up and what is not?

Mr. ROTH. Well, the arbitrators have held repeatedly that the contract gives us the right to direct the work, but that has had no effect, because the unions had the power to do what they pleased.

The reason for signing that particular agreement was this: We realized that the number of articles, in the long run, that can be put on the sling is not the sole factor. The number of trips that you make with that sling is equally important. The longshoremen have more ways of slowing that down than you can think of.

You see, unless you get the good will of the men, our ability to get them to produce would be stymied.

So on the assurances of the union that they would give us good production, we signed; also in the hope that self-interest would help—I mean that the men would realize that due to our costs going up, we would come to the point where we could not compete with foreign shipping and other forms of domestic transport; but it did not work.

Senator PEPPER. I did not mean to take up so much time, Mr. Chairman.

Now, is there any possibility of putting into practice the guaranteed annual wage in the shipping industry so that these men will not have the fear that they are going to be laid off sometime along in the year?

Mr. ROTH. I do not believe so.

Senator PEPPER. Or that their work may be slowed down?

Mr. ROTH. I do not believe that it is practical, for this one reason, if no other—that is this—that the men sign on for only one voyage. We do not have continuity of employment.

That is one reason why it is difficult for us to engage in tramp operations where a ship possibly may not come home for 2 or 3 years. American crews want to come home: they will not go out and sign out for a long period. They move from one ship to another and from one employer to another employer.

Frankly, one of the best things that we could accomplish in the shipping industry would be continuity of employment, but the union resists.

Senator PEPPER. Why does the union resist?

Mr. ROTH. The union resists because the unions want rotation of hiring. That is a part of the way by which they keep up their membership rolls.

They want to divide up the work and they want to move the men around. That is one reason why they resist it, to divide the work.

There is another reason, and that is this—and although I do not like to say this, you can substantiate it from the unions' own papers—they do everything they can to prevent the possibility of any loyalty between employers and employees. I am going to be frank about this.

We have a lot of ill feeling in the shipping industry that comes down from the days when these boys had poor working conditions. Traditionally, life on the sea was a hard life, but those days are behind us.

Today we have the finest seamen's quarters, and we have the best wages and the best food. However, that does not prevent the unions

from doing everything they can to prevent any loyalty on the part of the seamen toward his maritime employers. It is just basic in our labor relations, and it is very difficult to eradicate that, and that philosophy breaks right across continuity. It makes continuity almost impossible.

We had that situation among the longshoremen in an exaggerated form, where the unions have broken up our system of regular gangs, people who had worked at particular piers and had developed efficiency in the handling of different types of cargo.

Senator MORSE. Mr. Roth, you say that rightly or wrongly part of the animosity has developed historically between the employers and the unions. I suppose that the contention of the unions would be that they have been confronted in the past with company unions.

Mr. ROTH. I think that is true in all industry, but we have not had a company union, as you know, in our industry, for many years.

Senator MORSE. I know, but I mean historically that was a part of the whole battle.

Mr. ROTH. That is right.

Senator MORSE. And one of the present contentions of the unions is that if they assist in developing a closer relationship between the employee and the shipowner, there is a danger, so they say, that they may come back to the company union, and therefore that it is necessary somehow to get very clear to them that that danger does not exist.

Mr. ROTH. That is true. I would like to refer to that in a point which I make later on, when I come to industry-wide bargaining, because I think it is utterly impossible for us to operate on a single-employer-unit basis. We could not have a single employer's unit because of the opposition of the unions to it. They would be fearful that we were setting up a company union.

Senator MORSE. That is right.

The CHAIRMAN. Proceed, Mr. Roth.

Mr. ROTH. We believe that compulsory arbitration would destroy the effectiveness of collective bargaining. We think that if the unions knew that every dispute was subject to compulsory arbitration, that it would put a great damper on voluntary adjustment of labor disputes; that is, any efforts by the union.

They would simply wait; they would ask for the moon, and they would probably get some of it; certainly, they would lose nothing. They would ask for twice as much as they expected to get, and perhaps they would get a quarter, and then they would come back in a short time with another demand.

As a result, we think that they will not agree to compromises through collective bargaining, because they will be able to compel the employer to arbitrate the issue several times, and they will undoubtedly get as much as they would compromise for, and probably more. As I see it, the normal process of collective bargaining would be completely vitiated.

Now, the third reason why we would be against compulsory arbitration is that our record has shown arbitration is not equally enforceable against the employer and the employee. It is binding on the employer, and under the law of many States we are subject to recovery

for damages if we do not comply with it. But we have had great difficulty in getting the unions to accept the awards, as the distinguished Senator from Oregon well knows.

In fact, I advised him before the meeting I would have to call the committee's attention to the fact that he resigned his position as coast arbitrator because of the refusal of the unions to accept his awards. Judge Sloss, who had previously acted as an arbitrator, and Mr. Dagget both followed the same course in our history out there.

Senator MORSE. It should be added though—

Mr. ROTH. They went back.

Senator MORSE. In the West Kyska case, after the resignation, they had to negotiate a new contract with you gentlemen, and I think you will have to agree with me that as a result of the resignation and the new contract they found themselves in a more unfavorable position as compared with their previous position.

Mr. ROTH. We have not always had arbitrators who have had the courage to resign because of the refusal of the unions to abide by the decisions of the arbitrator. But, even so, if we assume you had equal legal responsibility on a contract or award it is impossible to force men to work. We all know that. It is inherent in the situation that you cannot get equal responsibility on these contracts due to the limitations upon the ability of any court to compel men to work against their will.

The CHAIRMAN. Your opposition to compulsory arbitration extends to grievance procedure and interpretation of contracts as well as basic questions?

Mr. ROTH. Compulsory arbitration, yes. But, we favor voluntary arbitration. We agree in our contracts we will submit certain disputes, and, having agreed, we are bound to do it.

The CHAIRMAN. There have been various proposals here that we provide by law that such agreements or such awards may be filed in court and the court may enforce them.

Mr. ROTH. By State law, that is the law in California.

The CHAIRMAN. And you would not object to that kind of provision in the Federal law?

Mr. ROTH. We would not.

The CHAIRMAN. Supposing that compulsory arbitration is not included in the collective-bargaining agreement, would it be feasible for us to pass a law saying that in case that is omitted, a certain procedure shall be followed? I mean it has been proposed that we impose compulsory arbitration in grievance cases and interpretation of contracts by providing that the parties shall do so in every contract, and, if they do not, some clause that we write in effect is written into the contract.

Mr. ROTH. I would object to that.

The CHAIRMAN. You think that it is necessary that the parties agree in the collective-bargaining agreement itself that they will submit disputes to voluntary arbitration?

Mr. ROTH. I think the scope of arbitration should be a matter of judgment by the parties.

The CHAIRMAN. Thank you.

Senator MORSE. On that point, Mr. Roth, one of your points is that you think the terms of reference, the terms of the arbitrator's jurisdiction, should themselves be the subject of collective bargaining set out in the contract itself?

Mr. ROTH. I do.

Senator MORSE. What do you think, Mr. Roth, knowing, I am sure, the reservations that I have on the procedure, of the tendency in some industries to develop so-called impartial umpires as contrasted with a voluntary arbitrator functioning under the contract?

I will put my question this way: Do you think that an impartial umpire for the maritime industry, for example, would tend to cause the parties to do less collective bargaining and incline them to substitute the impartial umpire more and more for the determination of the questions that they themselves ought to determine by agreement?

Mr. ROTH. You are assuming, are you, that this impartial umpire has authority to determine the scope of the arbitration?

Senator MORSE. Yes.

Mr. ROTH. I certainly think it would, as I said, vitiate collective bargaining processes. These men would simply wait. They would get the best they could out of collective bargaining. Then they would say, "We will take a chance on the arbitrator's award." And, history has proved that they would not be very far wrong in their expectations. They would probably come out as well as any compromise they would make voluntarily. They could not lose; they might gain.

Senator MORSE. Do you agree with me that in order to avoid that danger—I think it is a very real danger in some industries—that the arbitrator ought to see to it that in the arbitration contract itself there is reserved to him the right to pass judgment on whether or not the parties have, in fact, participated in good-faith collective bargaining on an issue, and therefore refused to take jurisdiction until they can show him that they have participated in good-faith collective bargaining?

Mr. ROTH. I should favor that.

Senator MORSE. I think it is a point, Mr. Chairman, that needs to be particularly stressed as we deal with this question of arbitration, because, in Mr. Roth's own industry, I know of a goodly number of cases in which it was charged by one side or the other that there had not been any collective bargaining. I passed judgment on that point first, and if, in fact, there had not been, I simply said, in effect, "Gentlemen, when you can show me that you have lived up to your obligations under the contract to bargain, we will proceed with arbitration, and not before."

Mr. ROTH. I think that genuine good-faith collective bargaining should be a precedent to the right to demand an issue be arbitrated.

Senator PEPPER. I am sorry I have to go to another committee meeting. You said something a while ago that indicated, or gave me the impression, that the unions were maybe trying to get in more members, or something like that. I am informed that instead of trying to get in more members they have closed their books to membership at the present time. Is that information correct?

Mr. ROTH. That is true; but, I did not intend to convey the impression they are trying to get in more members. My point is they are trying to provide work for the members they have, by restricting the amount of work a man can do in a given hour.

Senator PEPPER. Well, at the present time is there any surplus of labor? Are they all employed?

Mr. ROTH. There is. They are beginning to close their books because, of course, we were operating 5,600 ships at one time in this merchant marine, and we are going down rapidly. We operated 42,000,000 tons, and now we are operating about 26,000,000. Of course, that is reflected in the number of men who can be employed.

Senator PEPPER. I see. Thank you very much.

Mr. ROTH. In our field it would be absolutely impossible for us to pass our costs on to the public as a result of wage increases granted under compulsory arbitration. In the domestic field we are subject to regulation, and while we have hopes that the Interstate Commerce Commission will increase these rates, at the moment we are not operating for private account because we cannot meet our expenses.

But, in the foreign field, we run up against the matter of foreign competition, and there, of course, we could not pass the cost on to the shipper. In other words, we would be at the mercy of one agency which increases cost—compulsory arbitration. In the domestic field we are at the mercy of the Interstate Commerce Commission which tries to keep them down, and which has a great lag in its decisions under any circumstances in giving us any relief.

In the foreign field, we are in no position to pass costs on because of foreign competition.

I believe, when you consider this matter of compulsory arbitration, that there is such a thing as paying too high a price for industrial peace. I think the present lack of balance in labor relations has resulted largely from continual yielding by employers and arbitrators to union demands under the pressure of such potent weapons as the secondary boycott and sympathetic strikes.

I say this advisedly, but quite sincerely. I said it when I was on the War Labor Board, and I got into a lot of trouble because of it. I believe the most stabilizing influence that could be brought to bear on industrial relations would be a few unsuccessful strikes. Continual impairment of the employers' collective bargaining position through compulsory arbitration awards in order to appease labor and continue production is not the solution. This process merely aggravates the basic difficulties involved in this situation.

Senator MORSE. Mr. Roth, in this field of compulsory arbitration in those industries in which the rates are not within the control of the arbitrator, assuming for a moment that you are going to have compulsory arbitration—shipping, railroads, and public utilities—do you think that, then, as a matter of right, the arbitration board, if you are going to have it, should also have jurisdiction over rates?

Mr. ROTH. That would be the end of free economy. If you do that, you have government control and manipulation of our whole economy.

Senator MORSE. There is another point I was coming to after this one, but let me dwell on this a moment. If you do not give to the Board the authority to determine the rates, do you not put the Board

into a position in which, on the basis of the evidence before the Board, it may be satisfied that fairness and justice and equity dictate a wage increase, we will say of 10 cents an hour, but it cannot award the increase because the utility or the concern has its prices in turn fixed by another public body and cannot pay that wage increase unless the rates are increased?

In other words, will not an arbitration board find itself in that dilemma?

Mr. ROTH. We found ourselves in that dilemma frequently on the War Labor Board. I recall having served with you, as a member of a subcommittee, which waited upon Mr. Vinson in an effort to do exactly the thing you said—make it possible to carry out our awards by granting wage increases. That is the inevitable result of that.

Senator MORSE. And, in many respects, we did function on the War Labor Board as a compulsory arbitration board, did we not?

Mr. ROTH. We did during the exigencies of the war. We did not like it, but we had to as a matter of winning the war.

Senator MORSE. And, our experience as compulsory arbitrators taught us this lesson, if it did not teach us anything else, that that power is too great a power to place in mere man over the economic life of this country in time of peace, did it not?

Mr. ROTH. Most assuredly. But, further than that, I think we found ourselves in a position where we were not able to enforce our decision against each party equally, and we resorted to the very dubious expedient in some cases of taking over possession of an employer's plant in order to enforce our awards upon a union.

Senator MORSE. Well, in case of defiance in peacetime, do you know of any way that the Government could avoid using big stick methods in order to compel compliance, even to the extent of operating the plant, if necessary, for the time being?

Mr. ROTH. So far we have not been smart enough to devise in the coal industry any other method of doing it.

I do think, however, that if some of the powers, the unrestricted use of the secondary boycott, the sympathetic strike, some of these other things you are seeking to eliminate here or at least modify, were to some extent modified, some of these other problems would not be so difficult.

Senator MORSE. Two more questions on this. I think it is implied in your statement; do you agree with me that a system of compulsory arbitration, even over public utilities, shipping, railroads and those other industries that we say are so charged with public interest will in the long run tend to lead to a socialization of those industries?

Mr. ROTH. I think it would inevitably, because you are going to have to control prices. As you have already indicated, once you have controlled prices and wages, you have got the Government practically dictating the administration of that particular industry.

They are not doing so well with that this morning in England, incidentally.

Now, as to the closed shop; we have some very definite ideas on that, due to the responsibility of our employees. We are opposed to any type of closed shop which deprives the employer of his right to determine the qualification of his employees. We do think, if he has that right,

then the employee in all fairness should have the right of appeal against discrimination—that the employer should not have any right to discriminate against the union or to discharge for capricious reasons. Most of our collective bargain contracts do give the employee the right to have the question of fair discharge arbitrated.

Now, I know of no industry in which the right to select and discharge for cause is so important to the employer as it is in our industry. Our licensed officers are charged with grave responsibilities. We are facing this issue—the demand for the closed shop—immediately in the industry, because our longest tie-up last fall arose from that. Our licensed officers are charged with grave responsibilities, both by the employer and by the Government. They are responsible for the safety of the crew and the passengers, and discipline at sea, of course, is absolutely essential to safety at sea.

They are responsible for delivery in good condition of cargoes worth millions of dollars. Dereliction of duty or even a mistake of duty may subject the employer to enormous claims for damages.

The licensed officers of a vessel are subject to many statutory regulations which deal with customs, immigration, sanitation, and many other items. And, under the law, if they are derelict in their duty in that regard, and do not observe them, the penalty goes against the ship-owner. We are subject to some very considerable penalties if our responsible supervisory officers on the ship do not comply with these Federal statutes.

It is highly important that we should, therefore, have the unrestricted right to determine the qualifications of these men. When the ship leaves the port, these officers are, to all intents and purposes, the management. They have full charge of that vessel. The vessel may be worth anywhere from a million to 15 million dollars. And, of course, the value of a vessel ran as high as \$70,000,000 in the case of the *Normandie*. But, our own vessels run up—like the *America*, if you rebuilt it—to certainly 15 millions. That is a very great responsibility.

I think you realize, under those circumstances, the importance of those officers being free from domination by the union, and particularly by the men that they discipline or direct on the ship.

The demand for the closed shop, we think, does not arise from any need of protection against the employer. The National Labor Relations Board takes care of that. The real demand for this closed shop comes from union leaders who want complete control of the membership. Many of our greatest troubles have come as a result of a closed shop in a local union where an individual leader often disobeys the advice and instructions of his international union. We have had some very critical cases of that in our industry out on the west coast.

The unions no longer require the closed shop to protect themselves against the employer. They want protection against raids—jurisdictional raids—by rival unions, and that matter can be taken care of adequately by the National Labor Relations Board which has been provided by law, for that purpose, for the benefit of unions.

It is said that you have to have the closed shop to develop a strong union. That may have been true in days gone by when there was

such great resistance to collective bargaining. But, by and large, the big industries, and certainly our industry, are committed to collective bargaining. We are under no delusions that we can ever break down collective bargaining. By law, and by tradition, it is established.

Many of the strongest unions in this country never had the closed shop. The railroad unions never had it. It is a criminal offense for employers to grant a closed shop in the railroad industry.

I notice in the press that somebody testified before this committee that the closed shop was required to prevent Communist infiltration in the unions. That is a two-edged sword. Our own experience would show that Communists have used what practically amounts to a closed shop in our industry to control union machinery. You have a sharp conflict in the NMU between Communist sympathizers in the seamen's union and Mr. Curran. I think it is conceded the machinery of the union has been pretty much controlled by people who at least have sympathy toward the Communist program.

The CHAIRMAN. What would be the effect of passing a law forbidding a closed-shop contract? Would you still have a closed shop, if such a law were passed, and then the seamen's union men simply refuse to work on a ship where there was a nonunion man? What I am trying to get at is how much do we accomplish by passing a law saying that there shall be no closed shop?

Mr. ROTH. You accomplish this much: You deter I think the effort by some lazy organizers who go out and organize a plant by going to the employer and demanding he accept a closed shop, and then going out and picketing his suppliers, all those people who serve him, and absolutely forcing him to grant it.

I came down on the train last week. A man, whose name I do not even know, was sitting next to me at the dining-room table. He related this experience. He said he had just had a demand from the organizer for the unionization of his clerical help. He asked him whether he represented the employees in the plant. He said he did not know whether he represented the employees in the plant or not. He proposed to have him sign a closed-shop contract and thus force the employees to join his union. He said, "I will put a picket line upon any supplier that you have if you don't sign up." He can do that; unions have been doing that right along.

Under such pressure the man finally signed a closed-shop contract. He should not have done so under the National Labor Relations Act.

The CHAIRMAN. I agree. Take the carpenters' union. I assume if you passed a prohibition of contract for closed shop in the carpenters' trade, union carpenters would just walk out if a nonunion man was on the job. This was so long before there was any such thing as collective bargaining, preceding collective bargaining really in that particular trade.

Mr. ROTH. In many established industries, Senator, you are quite right. The men that the employer has to have to do the job are now in the union. He has to deal with that union, whether it is closed shop or not. But, by the same token, they do not need a closed shop where that is true. That is true in the railroad industry, and the same thing is true in the building industry to some extent. It would be true in our industry.

We have to deal with the union; they have the men.

The CHAIRMAN. Do you distinguish between closed shop and union shop? In other words, I take it that if you prohibit a closed shop it would leave the employer free to employ men not members of the union. On the other hand, if we did not prohibit the union shop—this was suggested by one of the witnesses—then you could employ anybody you wanted to, but, after 30 days or some such provision, they would have to join the union.

Mr. ROTH. I believe, frankly, the union shop is less objectionable, because it gives the employer greater latitude in engaging his employees and determining their qualifications. But that leads you up to the question of whether or not you are going to have a closed union and whether the union by its constitution agrees to take in every man you hire. And it leads you up to the question of unfair expulsions from the union.

The CHAIRMAN. I understand. But, from your point of view, there is some advantage in simply prohibiting the closed shop, even though the union shop is still permitted?

Mr. ROTH. That is right. I mean I think the closed shop is more objectionable than the union shop.

The CHAIRMAN. I have to go to another meeting so I am going to ask Senator Morse to preside for the rest of the morning, if he will.

Senator MORSE. On this closed-shop issue, first you point out certain abuses of the closed shop. There is the type of abuse in which the union organizer, not knowing whether or not he has any of the men in the shop, says, "Sign here, or else," intimidation of course, and that type of abuse.

Then you point out the abuse of the closed shop in that it feeds the flames of jurisdictional disputes. One reason for the demand for it is that unions want to protect themselves from encroachments by other unions.

Could not those abuses all be handled, to the extent that you could handle any of these problems by legislation, by appropriate amendments to the Wagner Act, giving to the Labor Relations Board jurisdiction over jurisdictional disputes, in turn to be enforced by the courts if they defy the decisions of the Board, and of secondary boycotts arising out of jurisdictional disputes—a catch-all amendment that will entitle the employer to a decision from the Board on a petition alleging unfair labor practices by unions, such as coercion and intimidation?

Could that not all be handled through amendments to the Wagner Act and thus make unnecessary the passage of an out-and-out prohibition on the closed shop which, if passed, will raise into dispute the question of these hundreds of closed-shop contracts now in existence, many of them voluntarily signed by employers who want that form of shop?

Mr. ROTH. Measures as you have suggested obviously will help and cure a lot of problems. We are suggesting that, as one of the things that should be done, no union should be permitted to picket for recognition in the absence of a certification, because they have their remedy provided by law. We do not think your bill goes far enough on that.

In our particular industry, however, this thing is of great moment to us because of the effect on the master of the vessel. We think it is

highly important that he should be an independent agent of ours as a supervisory employee. I was just coming to that. We think all of our supervisory employees should be eliminated from the definition of "employee" in the National Labor Relations Act, so that we are left free to either deal with supervisory employees in a union or not, as the interests may demand or require.

We just had an experience with the masters, and we know this: That masters were ordered off their vessels by the unions during this recent tie-up. Now, that is unprecedented. Heretofore, they have always left maintenance crews on the vessel. Had we had the cold weather in October that we have now, there would have been untold damage to our ships, because we could not have kept up steam. We know what has happened to some of the men who did stay on during this time. They came up to sign up crews on their vessels, and they had great difficulty getting crews, even though they did not yet have the closed shop. If you have a closed shop, the master is at the absolute mercy of the union, it seems to me.

Senator MORSE. Getting back to our earlier discussion, if you and I are in agreement, and I think we are, that the closed-shop issue is not an arbitrable issue, as a matter of law, if it is to vest at all, it must vest by way of voluntary agreement between the parties. Then what do you say to those employers who argue for a closed shop under the claim that they should have freedom of contract to enter into such arrangement if they prefer to run their business that way? Would an out-and-out prohibition take that right away from them?

Mr. ROTH. I think, as a matter of fact, in the shipping industry we would all be glad to see it applied to supervisory employees without any doubt, because the economic power of the union is so great, if there is not a prohibition against it, they are going to force it on us. They already have it with licensed officers of some employers on the east coast. The best we could do with this issue in the strike last fall was maintain the status quo on the east coast. On the west coast we resisted it, took a strike, and eventually won out.

Senator MORSE. What I am concerned about is that you said earlier in your testimony that after all we have got to be ready now and then for a few costly strikes, and some of these things, after all, may have to be fought out on the economic line.

Mr. ROTH. That is right.

Senator MORSE. And isn't that the way to meet the closed-shop issue—if you cannot arrange a closed shop by collective bargaining, if the union is so shortsighted as to demand a closed shop that it cannot get by voluntary agreement, to take them on in a strike on that point rather than pass a law which says—because you think it is particularly bad in your industry—we are going to pass a blanket law that says in the United States no employer shall have the right to enter into a free and voluntary contract for a closed shop even though he wants to, because in the shipping industry and some other industries the employers are opposed to a closed shop?

Mr. ROTH. I think from the standpoint of the national interest that the monopoly which the closed shop gives over the work opportunity of an American citizen is iniquitous. I just cannot subscribe to it. I do not think that any union, like the coal industry, should have a com-

plete monopoly upon the opportunity of an American citizen to work in the coal industry. And that is what the closed shop gives this union.

Senator MORSE. Now take a hypothetical case of 100 employees. Only 100 people can be worked in a plant. The employer says, "Given a responsible union, I prefer a closed shop." You and I disagree with that preference. There is no doubt as to my position on the closed shop as far as my preference is concerned. I do not like them. I think they weaken strong unionism in the long run. I think they give rise to certain abuses from the standpoint of the best interests of labor. But my preference, it seems to me, is immaterial. As a legislator, I have to get into this question of right.

Now, you are referring here to the rights of workers that do not want to join the union, but I cannot blind myself to the rights of workers that want to join a union, in a particular hypothetical case, when the employer himself says, "I, too, prefer to have in my plant only those men that will enter into this voluntary agreement with me that this union shop or closed shop shall be the basis of our contractual relationship."

Now, what right of the nonunion man am I violating if I refuse to vote for legislation that would outlaw the closed shop and take away from the union man and the employer who wants this type of shop the right to enter into a closed-shop contract?

Mr. ROTH. I think there comes a point where you have got to have a balance of the public interest in this matter against the contractual rights of employer and employee; and, I think when you balance it all up, the public interest outweighs the right of the individual employer who might want a closed shop.

Now, I will concede there are employers who have the closed shop and who are satisfied with it, but I think that is due to the fact they have a responsible union, and that they would have that responsible union whether they had a closed shop or not. I do not think that the closed shop is essential from the standpoint of the union.

Senator MORSE. I do not think so either.

Mr. ROTH. It depends upon the leadership of the union. I think the employer who takes the attitude, "I have got to have the closed shop," may be mistaken in assuming that the closed shop gives him the responsibility. Probably the record of his own dealings with the union, good labor relations, and the type of labor leadership he is dealing with is responsible.

You have not had the closed shop in England, and the unions have grown strong. You do not have it in Sweden; and you do not have it in the railroad industry. Certainly the union does not need it.

Senator MORSE. Grant all those things. Grant they do not have it in other countries. A good union does not need it, and there probably would be greater interest in union activity on the part of the members if they did not have the closed shop. I still have to hold to this question of whether or not under the principle of freedom of contract in this country under our Constitution, you are going to be in very serious legal difficulties with any law that says to an American

employer or American worker, "Thou shalt not enter into this type of contract."

Mr. ROTH. We legislated a yellow-dog prohibition in this country, and nobody questioned it—which is the reverse of the closed shop. It was sustained.

Senator MORSE. It is the reverse—in a very long direction.

Mr. ROTH. Even so, it is an infringement upon the right of the employer to make contracts to do what he wants to do with his own particular plant.

Senator MORSE. I have no question about the legal right in this country to limit our contractual rights as a matter of public policy whenever we think that a certain contract violates sound public policy. And, of course, under your "yellow dog" contract, one of the basic theories of it was that we have to set up certain minimum standards in the law to protect people from being taken undue advantage of by more powerful people—in that instance, the employer.

But, I have yet to hear an argument that says that a closed shop, free of the abuses that you and I are talking about, which I think can be prevented by amendment to the Wagner Act—at least those amendments will balance the employer's right to protection—

Mr. ROTH. It will help.

Senator MORSE. With those passed—maybe it will but I just cannot hear it—I cannot hear the United States Supreme Court saying that an out and out prohibition of a closed shop conforms to the constitutional rights of freedom of contract in this country.

So, my objection to the Ball anti-closed-shop bill has been, and will continue to be until somebody can meet my legal objection to it, purely a legal objection, that I just do not think it is safe in this country for us to pass the type of legislation that I think has as many constitutional dangers in it as that type of prohibitive legislation.

Mr. ROTH. I have no desire to argue too long with you, but I would just like to say this: I think the very philosophy on which you base the outlaw of "yellow dog" contract would apply at this moment to the inequities that have developed under the closed shop. I think it would be a great help if these other measures you mention were adopted and curtailed some of the power of unions. But, I say frankly that I do not think the power of any employer has ever equaled that of union leaders of today with the combination of closed shop and the secondary boycott to enforce demands for it.

Senator MORSE. Are there any other questions on this point?

Mr. ROTH. On the question of supervisory employees, we suggest that the power of the National War Labor Board to include them should be limited, for the very reasons we have stated in connection with our objection to the closed shop and that is the importance of having these men subject to direction of the employer.

Senator ELLENDER. Does the definition given under S. 55 cover that situation?

Mr. ROTH. It would be satisfactory to us, with this exception: We think it should be extended to include confidential employees on whose unqualified loyalty the employer must depend. Within this group

are watchmen who must police the docks and take steps to prevent pilferage. I am not sure your language is broad enough to cover that.

That is a matter of great importance, because pilferage has become a great problem.

The exemption should also include confidential office staffs of the employers and other workers who have access to information that the union can use to its advantage in collective bargaining or disputes with the employers. We think there are confidential employees that should be included that are not included now.

Senator IVES. May I ask a question? You would not in any way go so far as to prohibit employees in those categories from organizing, would you?

Mr. ROTH. No; I have not suggested that.

Senator IVES. The only thing is that you would not allow them to bargain collectively under the National Labor Relations Act; is that it?

Mr. ROTH. We would deprive the National Labor Relations Board of the authority to force us to bargain with them. We would leave it free to the individual employer to determine whether he should or not.

Senator IVES. As a matter of fact, you would probably be perfectly willing to bargain with them?

Mr. ROTH. We would in some instances.

Senator IVES. Left to your own devices, you probably would, would you not?

Mr. ROTH. Not always. It would depend a lot upon who has control of the union, its responsibility, and who is going to direct it. We have resisted it in the water front where we have control of long-shoremen extended through our whole supervisory structure.

Senator MORSE. Do pursers fall into a quasi-supervisory position?

Mr. ROTH. They are in that position and, I think, would be covered by that definition. But we want to be sure, and we might like to suggest some clarifying amendments to make sure. They have considerable responsibility on our big ships, of course.

As far as sympathetic strikes and secondary boycotts go, there seems to be very little difference of opinion that the secondary boycott is indefensible as an invasion of third parties' rights.

The sympathy strike is much more difficult to handle and it gives us a great deal of trouble. We have some doubt as to whether or not your language in this S. 55 goes far enough.

We would like an opportunity to submit some specific clarifying amendments to you, if we may, Mr. Chairman, on that.

Senator MORSE. We will be very glad to receive them.

Senator ELLENDER. Have you the amendments available?

Mr. ROTH. We do not have them here today, but I would like, if we may, to submit them.

Senator MORSE. Let the record show they may be inserted at a later date.

(Subsequently the following suggested amendments were received from Mr. Roth:)

SUMMARY OF CHANGES IN S. 55 RECOMMENDED BY THE NATIONAL FEDERATION OF AMERICAN SHIPPING, INC.

1. S. 55 would create a Board in the Department of Labor to be known as the Federal Mediation Board. Shipping believes this Board should be wholly independent of the Department of Labor. We therefore suggest that the appropriate amendments be placed in lines 5 and 6 on page 1 of the printed bill, line 21 on page 6 of the printed bill, and lines 17 and 18 on page 10 of the printed bill.

2. Section 203, with respect to suits and against labor organizations, seems very inadequate. More certain and otherwise effective sanctions should be provided if compliance is to be obtained. Norris-LaGuardia Act limitations reduce the effectiveness of the right to damages. We suggest that the right to relief at law be made specifically free of any limitations in the Norris-LaGuardia Act. We further suggest that equitable relief be provided by a specific amendment to this section in the language of subsection (e) of section 204.

3. The penalties provided in subsection (d) of section 203 should be implemented. The only penalty is the right of an employer to discharge the worker who participates in a wildcat strike in violation of an agreement. An employer would discharge under this clause only at a substantial risk, for the NLRB could find that the strike was not in violation of an agreement or after discharge his action may be ratified or approved by the union. If the discharge were found improper, the employer would be subject to serious penalties under the NLRA. If the man is not immediately and permanently discharged, he is free of all penalties. In these circumstances, there is little or no certainty of penalty. We all know that certainty of penalty is the strongest deterrent to unlawful acts. We therefore make two suggestions: (1) We suggest adding "concurrently by written notice to the employer" after "not" in line 15 on page 16 of the printed bill. (2) We suggest adding at the end of the subsection (line 22) the words "ten or more days after the participation of such employee has been finally determined," or that the proviso clause be eliminated. This second suggestion would permit an employer to keep a worker on his pay roll during the litigation of the discharge and would protect workers against discharge without an investigation of the facts.

4. The purposes of section 204 with respect to boycotts and other unlawful combinations are sound; however, the language of the bill may not clearly accomplish the purposes.

Subsection (a) (1) is directed at "hot cargo," a greatly abused technique of irresponsible labor that was viciously used by the west coast longshoremen for many years. Senator Morse, when our arbitrator, issued several decisions holding this technique in violation of our contract. We suggest that the words "or to commence" be inserted after "cease" in line 9 on page 17; this will definitely preclude the use of the hot cargo technique with a positive as well as a negative purpose. More important, perhaps, is our second suggestion—that there be added before the semicolon in line 11 on page 17 the words, "or cargoes transported by any other employer." This second suggestion would preclude the use of the "hot cargo" technique against transportation companies. The railroads, truck lines, and ship operators should be given the same protection as is given manufacturers, processors, and producers.

Subsection (a) (2) is directed at jurisdictional strikes. We believe it should prevent all jurisdictional strikes and compel unions to rely on the National Labor Relations Act and its simple, effective, and speedy procedures for determining bargaining agents and requiring the employer to bargain with the duly selected bargaining agent. The language of the present bill does not eliminate jurisdictional dispute picket lines. It can be interpreted to permit them (1) by any union representing one worker until one union gets a majority in the unit and (2) by any union that has a majority. The purpose of the NLRA was to eliminate such strikes. This can be accomplished by a prohibition on all jurisdictional strikes, which will leave unions with full protection under the NLRB's procedures. We therefore suggest that a period be placed after "employment" in line 16 on page 17 and that the remainder of lines 16 through 20 be deleted.

This section should also be amended to prohibit sympathy strikes whether actually called by a sympathetic union or accomplished by the placing of a picket line at a place of employment not directly involved in a dispute for the

purpose of creating a sympathetic work stoppage. This latter technique was the practical means by which the Nation-wide shipping work stoppage was engineered last fall. To prevent these abuses of the right to strike and picket we suggest (1) that there be added after "materials" in line 7 on page 17 the words, "or by reduction of work on job opportunities of any employee or by threats of such reduction" and (2) that a new clause (3) be added to read: "(3) to injure any employer, except where such action is solely by the employees of such employer or by such employees and their duly designated collective-bargaining representations in the course of a lawful labor dispute regarding the terms and conditions of employment of such employees at the place where such injury is sought to be inflicted."

Mr. ROTH. Sympathetic strikes have been a source of great difficulty to us. Just last fall the whole port of Coos Bay, Oreg., was tied up by a sympathy strike by the longshoremen to compel an employer with an A. F. of L. contract with the seamen to switch over to the CIO. There was no way the Government or anybody else could break that port open.

Jurisdictional strikes and recognition strikes we have already covered pretty fully. I do not think there is any point in going on with that unless you have a point to raise.

Senator MORSE. The entire statement of Mr. Roth will be published in the record.

Mr. ROTH. I would like, however, to call attention to two specific cases which recently occurred. During the month of October 1946 we had 38 vessels demobilized in New York, belonging to the United Fruit Co., and 1,585 seagoing employees by the maintenance of picket lines established by an engineers' union at the New York docks for the purpose of enforcing recognition of the union. These picket lines were established, notwithstanding the fact that the MEBA, the union, had been rejected as the collective-bargaining agent by vote of 6 to 1 in an election conducted by the National Labor Relations Board.

Similar picket lines were placed outside the American Export Lines piers on October 1, notwithstanding the fact that the National Labor Relations Board had on two occasions declined to certify the MEBA as the collective-bargaining agent.

We could, if the committee desired, submit any number of cases, but I think they are familiar to you, and other witnesses have introduced them here to illustrate that point.

Senator MORSE. Going back to the Coos Bay dispute for a moment, it is true, is it not, that arbitration was offered in that case, and one union agreed to it and the other union refused to agree to it?

Mr. ROTH. Yes.

Senator MORSE. It is also true, is it not, that that port was tied up for a period from the latter part of June until at least in November without a stick of lumber being loaded on a single ship because of that sympathetic strike?

Mr. ROTH. That was a time when the country was crying for lumber, and it was needed for essential housing all over the United States.

I am just informed, and you are probably well aware of it, that Coos Bay is the biggest lumber-loading port in the world.

Senator MORSE. How well aware of it I am.

Do you agree with me that such disputes as the Coos Bay dispute make it imperative that this Congress pass some legislation on juris-

dictional disputes that will guarantee to the public that work will proceed while the case is determined on its merits?

Mr. ROTH. Absolutely. At this moment in California, to my own knowledge, we have an entire city tied up because it cannot get its supplies, because an organizational drive is being conducted by the teamsters' union. Instead of going to the National Labor Relations Board the union is demanding the closed shop. They have simply served notice on the transport companies which supply this little city of Rio Vista that that city is "hot," and the whole city is "hot," which means nobody will take any products in there.

Senator MORSE. You remember the Tacoma case a few years ago when Tacoma was tied up because of the refusal of the union there to work due to a jurisdictional dispute, and that resulted in a tremendous loss of shipping on the whole Pacific coast.

Mr. ROTH. It not only results in loss of shipping but it results in a very direct loss to the men. I have seen polls on this, and I wish I could present them this morning, but I cannot. I have no doubt in the world if you took a poll of the union men themselves they would be opposed to secondary strikes. Very often the issue is a very remote one.

I recall an instance which I think I cited in my statements where we were tied up in San Francisco over the refusal of the CIO longshoremen to work with two sailors who had refused to go out on a jurisdictional strike 3 years before on the east coast. That is how remote is the interest of people affected by these secondary boycotts in these causes of disputes.

Union responsibility: Of course, we are strongly in favor of any program which will impose equal responsibility in law and in equity upon the parties to a collective-bargaining agreement. We think it is highly important that in the amendments which you propose with regard to secondary boycotts and other unlawful practices that you make sure that the immunities of the Norris-LaGuardia Act are not in effect, and that your law takes precedence over that, or otherwise we will accomplish nothing in the way of sanctions.

We have had long experience on the west coast with irresponsibility on contracts. Much of our difficulty does not arise from inability to negotiate the contract but from "job action" which occurs on a particular ship or a particular dock. Believe it or not, we have had more than 1,000 such stoppages of work of individual ships or individual operations over a period of 5 years.

Now, we think that we have got to develop everything that we possibly can to insure that our contracts, once entered into, will not be subject to that type of violation. Those stoppages were admittedly violations of our agreement.

I think the way to make sure of that is to be sure the union is responsible in damages, free of the limitations of the Norris-LaGuardia Act. We think your bill does not go quite far enough on that subject, and also on the injunctive process.

We see no reason why union members or union leaders should be exempt from injunctive process against acts which are declared unlawful and against public law. We are not asking that the Norris-

LaGuardia Act be repealed, but we do think that once an act is declared to be unlawful, then the union should not be granted immunity either from the processes of law or equity in the enforcement of the contract and the prohibition of the unlawful act.

Senator MORSE. You would return to the employer the right to petition for injunction rather than have the particular Government agency concerned with the case, upon a refusal to comply with its decision, petition for injunction?

Mr. ROTH. I think you would have to have both. I think the National Labor Relations Board, of course, must be in the position to enforce its decisions, and I think they should have the right by injunction, if necessary, to restrain the losing union from continuing to disregard the award and go on picketing the plant, which happens right along.

Senator MORSE. But if the employer were given the right under amendment to have the National Labor Relations Board pass on that conduct, and the Board found against the union, and the union refused to comply with its decision, and the Board then asked the courts to enforce it by injunction, would you not cover it without giving to the employer the right to ask for an injunction?

Mr. ROTH. You would in that particular case, but you would not in these cases where you have people going out and turning over the automobiles and burning them in the plant, and that sort of thing—taking possession of the plant—a sit-down strike. Besides, relief through the Board's action would be very slow and cumbersome.

Senator MORSE. If you had an amendment against mass picketing you would.

Mr. ROTH. Suppose you had an amendment against it. If you have no injunctive way of enforcing it, it is a pretty dead issue.

Senator MORSE. It would be up to the Board to enforce it by way of injunction. The only reason I say this is I think you know very well the tremendous red flag to labor that government by injunction is. I am interested in legislation that is going to promote better relations between employers and labor, and it seems to me that if we go very far in amendment to the Norris-LaGuardia Act we are going to find ourselves with legislation that is going to create rather than solve the problem of industrial harmony.

Mr. ROTH. Yes; but your suggestion would not take care of the man who has no dispute or quarrel with the union at all, and whose place is picketed, would it?

Senator MORSE. Oh, yes.

Mr. ROTH. How would it?

Senator MORSE. I propose to permit him to file a complaint with the National Labor Relations Board charging unfair labor practice on the part of that union.

Mr. ROTH. If you provided effective machinery for the National Labor Relations Board you would not be assured they would move in on it.

Senator MORSE. That is going to be their statutory duty.

Mr. ROTH. It would, of course, tend to solve the problem; I will concede that. But, I will give you one example of the union's striking against the hotels in San Francisco. The hotels operated throughout

the strike. They went to the wholesale butchers and got their own supplies, whereupon the union went to the wholesale butchers and said, "If you do not stop supplying the hotel, we are going out and picket the Safeway Co., which is your best customer."

That is a case of a tertiary boycott. The Safeway had nothing to do with the case.

There is just no limit to the power of union under this secondary-boycott procedure.

We come to industry-wide bargaining. In our industry we think it would just lead to utter chaos if you adopted a bill which made it impossible for us to deal with the union which represents the employees of any other employer. We could not operate a ship, frankly, at the present time. The seamen all belong, in the dry-cargo industry, to the NMU and the sailors' union in the Pacific. If we want to take a delivery from some shipyard on the east coast, we go to the union and ask for a crew. There is no other place we can go. We could not find any union that represents only the employees of one employer. They just do not operate that way. I am frank to admit to you that if we tried to force them to do it, we would see the greatest disruption in shipping we have ever seen in this country.

But, suppose we do succeed in getting a crew on. We start around the United States. We have to have a certain number of men on the ship, or we cannot leave a port. We continually have men leaving the ship because of illness or desertion, or some good cause, and we have to make those replacements. When we get down to New York we have to have somebody there who has contractual relationships with us so the union can supply us those men. The same is true at Baltimore and Galveston. We have to keep the crew full all the way around.

We have to rely on the unions who have absolute control and who deal with more than one employer to furnish those crews.

Senator ELLENDER. All shippers are put to the same test, are they not? That is, they must go to the unions for their crews?

Mr. ROTH. That is right.

Senator ELLENDER. And the wages and hours and everything else are uniform?

Mr. ROTH. They are not entirely uniform, but we are approaching uniformity. We have uniformity in the long-shore operations on the west coast, but not on the east coast. They are on the Pacific coast, because we have master contracts; but they are not uniform on the east coast.

Senator ELLENDER. But, what I had in mind was the scale in particular localities. On the California coast, as I understand, there is uniformity there.

Mr. ROTH. That is right—as to longshoremen. We are approaching uniformity in offshore entrants.

Senator ELLENDER. It is different on the Gulf coast as well as on the Atlantic?

Mr. ROTH. There are still some variations in contract terms as between the east coast, west coast and Gulf.

Senator ELLENDER. I understood that. But, each shipowner, depending on the locality from which he operates, has no advantage, one over the other, when it comes to selecting men to operate their ships?

Mr. ROTH. That is generally true. And, you are leading to my point, which is this: That if each employer had to bargain with a union which represented only his employees, you would have the greatest multiplicity and variation of working terms. You would have men leaving one ship and going to another ship with different rates and conditions. You would have ships tied up alongside of each other in the same dock with different terms of employment for the same job.

That sort of thing would create chaos. This bill, as a matter of fact, would abrogate virtually every single labor contract we have. It would put out of commission our arbitration adjustment machinery we have established to cover wide areas. The benefits of such a system depend largely upon uniformity of precedents and interpretation.

The effect of this bill would be, as a matter of fact, to vitiate this grievance machinery.

Our ships are not localized in their operations. They move around the world. Our plant is not local like a manufacturer's plant. If each company had to deal with local unions in each port which could not represent employees of other employers, we would have impossible situations. We could not possibly operate.

Senator MORSE. Is it not true, Mr. Roth, that a few years ago when you formed the Pacific Coast Waterfront Employers' Association you did so because you believed it was highly desirable to have uniformity of action among the employers in negotiating master contracts?

Mr. ROTH. We did it for that reason and for the reason that we were particularly vulnerable, as employers, to the demands of the union. What would happen would be that you would throw bargaining back to where individual company locals have to deal with individual employers, and that certainly would contribute to instability in every direction. It would put the individual local in the position where they would be trying to outdo the other fellows.

You would have competition for demands and benefits and would completely demoralize our industry.

We realize the implications of industry-wide bargaining involved in the coal industry and some of these other industries, but what we are saying is this, gentlemen, that we think it is important first that we make certain the National Labor Relations Board does not have authority to force an employer to go into a unit which includes other employers. That is particularly important to us because at this very minute we are threatened with an order from the National Labor Relations Board which would blanket our foremen and also our clerks into the longshoremen's unit on an area-wide basis.

The minute that happens, we will have our supervisory employees subject to the dictates of the very men they are supposed to supervise on the ships. Based on a study of the hearing of the National Labor Relations Act we do not think the Board has authority under law to do

it, but that is the position it is taking. We think that this matter can best be cleared up by amendments which makes it clear beyond any doubt that the National Labor Relations Board does not have authority to fix a unit for collective bargaining greater than the employer's unit.

Secondly, we think if the committee should decide in its best judgment to ban industry-wide bargaining, it should by all means make an exception of the shipping industry, due to our operating conditions, both ashore and afloat. Senate bill 133 does exempt the railroad and air industries. We think in the national interest of preventing disruption of shipping, it would be essential to exempt the shipping industry from the provisions of this bill.

We have learned that we do produce labor stability in a community by having employers engage in industry-wide bargaining.

I would like to give you one example: In San Francisco you have a labor council which has considerable control over the whole A. F. of L. union picture in that area. They have established their own rule that they will not sanction a strike, which means they will not support it, until there has been an opportunity afforded the employer to present his case. The employers who have organized there in what amounts to a city-wide organization of employers take much the same position with regard to employers. They caution them that they should not come to a lock-out or shut-down without giving an opportunity for the central employer's organization to meet with the representatives of the central labor organization.

What happens is that when they meet they generally appoint a joint committee which has on it representatives of other unions who are collaterally interested in this tie-up and who will be hurt if it occurs, and other employers who would be hurt if the employer locked out. You bring in the element of self-interest. We have adjusted any number of disputes through that voluntary cooling-off period. You do not get that sort of cooperation without employer organization. You get it by people dealing together in an industry and then collaborating in a clearing house at the top.

Senator ELLENDER. All of that is done on a voluntary basis, with no sanction according to law?

Mr. ROTH. All done on a voluntary basis.

Senator MORSE. Two points on this industry-wide bargaining matter. Is it not true before you had industry-wide bargaining in the maritime industry you were confronted with the union technique of "divide and rule"?

Mr. ROTH. "Divide and conquer." That is right.

Senator MORSE. Pick off the weaker employers and get a very good contract out of them, and then they would move on down the line.

The second point is this desire of yours to maintain at least industry-wide bargaining for your industry. There are other employers that share the same desire for their industries, too. It rests, does it not, upon your feeling that you ought to have the right to voluntarily enter into such an agreement with a group of employers so long as you are protected under the National Labor Relations Act with an amendment, if necessary, that says you cannot be forced into such association if you do not want to go into it?

Mr. ROTH. That is right. We think you cannot generalize and apply a ban against industry-wide bargaining against all industry under any circumstances. We think employers should be free to work out their own salvation in that respect under the circumstances applying to each employer.

Senator MORSE. And, that those employers in this country that have found benefit out of employers' associations such as your Waterfront Employers' Association should not have that contractual right taken away from them by law?

Mr. ROTH. That is right. And, what is more, we think that the people who are sponsoring this type of legislation are mistaken when they think that these national tie-ups occur necessarily because of industry-wide bargaining. We do not have industry-wide bargaining in shipping yet. We have 17 or 18 unions, that we have to deal with, and they are rival unions, so that our tie-up last fall did not result from the fact we had one contract.

I just saw a report by some research institute which referred to the fact that the tie-up in shipping was the result of a break-down in negotiations under an industry-wide bargaining agreement. That is not true. All negotiations had been settled and the strike was occasioned by a union putting out a picket line against an order of the War Stabilization Board.

Senator MORSE. This point, and I am through: Despite our differences as to the application of this principle to the closed shop, the fact nevertheless is that when it comes to industry-wide collective bargaining you feel that so long as there is protection provided in the law so that the public interest is not violated, American employers ought to have preserved to them that right of freedom of contract to enter into such arrangements?

Mr. ROTH. I do. I say, further, no matter what you do, it would be contrary to the public interest to disrupt the entire collective-bargaining pattern in shipping, and we just could not operate under it by this sort of ban.

Senator MORSE. A lot of employers feel it would be just as disruptive to disturb the closed-shop contract.

Senator ELLENDER. Just one question about the difference in cost of operating a ship per month. As I understand it, to operate an American ship, a Liberty ship, costs about \$11,000 a month.

Mr. ROTH. That is right; \$11,500 for crews' wages.

Senator ELLENDER. And the English ship is \$4,200?

Mr. ROTH. \$4,200.

Senator ELLENDER. How can we expect to maintain an American merchant marine unless we provide for huge subsidies?

Mr. ROTH. I am frank to say I do not see how you can maintain a merchant marine without subsidies. There are other items of cost that enter into this. Our oil and maintenance, our repairs cost more. But, I think you must be reconciled to the proposition that we can never hope to maintain our ships in international commerce to any great extent, when we get back to normal conditions, without subsidies.

Now, before the war, we were not able to compete in what I call "indirect trades." That is not between our country and other countries,

but, say, journeys from India to England. That was carried entirely by other countries, because we could not compete in view of our operating costs.

The most we can hope to do under normal conditions is to maintain direct service, service declared to be essential to our national economy, and to the development of our commerce through subsidies.

At the present moment subsidies are not required on all overseas routes because foreign freight rates are high, due to world shortage of tonnage, but that situation will soon be over.

Senator ELLENDER. But I am speaking about when we return to normalcy—that is, when England, Norway, and Sweden, and probably Greece, come back into their own, when these nations come back into the picture? I am just wondering to what extent we can maintain a large American merchant marine without the necessity, as I have just indicated, of subsidies.

Mr. ROTH. I am quite frank to say we are not going to be able to maintain a greatly enlarged American merchant marine, even with the subsidies. We probably will have about the same tonnage in the foreign trade as we had before the war. We will have greater carrying capacity than before the war and faster and better loading and better turn-around, but I do not think it is in the cards for the United States to maintain more than 4 or 5 million tons of shipping. We have to maintain an adequate merchant marine for national defense, and that is the justification for the subsidy.

We know in this war we were not prepared and we did not have sufficient tonnage. We know that every time we get into a war the United States has to furnish the tonnage for all the democracies of the world. We have had to build 50,000,000 tons this time. It is cheaper in the long run for us to maintain the ships, passenger and freighters as well, over a period of years than it is to incur all the waste that comes from building all this fleet during the war.

It would be just common good business to maintain it through subsidy rather than to do it the other way. You may say the atomic age has changed that. We are hoping that atomic weapons will be outlawed. If this occurs we will be right back where we were, so far as the need for ships is concerned.

Senator MORSE. Senator Ellender has raised a very important point, I think, when he calls attention again to the difference in cost of operation of American ships and foreign ships. But is it not important, in your judgment, to recognize this, that the fact is that we cannot get American workers to work on American ships if they had to have the conditions that prevail on most of the foreign ships that operate at much less cost?

Mr. ROTH. That is true.

Senator MORSE. And, secondly, we would not want them as Americans to have to work under such conditions?

Mr. ROTH. That is right.

Senator MORSE. And, thirdly, we cannot expect American workers to subsidize the merchant marine. That is a job for all of the people.

Senator ELLENDER. I am not advocating that at all.

Senator MORSE. I know you are not.

Mr. ROTH. The premise is absolutely sound.

Senator MORSE. We cannot get good American workers to endure those conditions. We should not want to, and, as the Senator says, he does not want to. But we have to make it clear to the American people from a defense standpoint we have to have a considerable merchant marine, and we have to pay for a certain amount of its subsidization.

Mr. ROTH. That is right. Subsidies are not bounties to the shipowner. Our subsidy is designed to take care of our difference in costs and difference in standard of living.

(Mr. Roth submitted the following statement:)

STATEMENT BY ALMON E. ROTH, PRESIDENT, NATIONAL FEDERATION OF AMERICAN SHIPPING, INC., BEFORE THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

The maritime industry has had a long experience with collective bargaining. It is no exaggeration to say that few, if any, industries have been vexed with so many stoppages of work. Since shipping is a service industry, labor difficulties in this industry have a very immediate and serious impact upon the economic life of the Nation. At this moment when America is feeding and supplying fuel to millions of people in distant lands, the uninterrupted operation of our vessels is a matter of life and death.

The maritime industry is particularly vulnerable to stoppages of work and labor difficulties, for the following reasons:

Its seagoing personnel must be drawn from skilled and semiskilled labor which is licensed and certificated by the Government. All oceangoing personnel is unionized. While the longshore labor is not licensed or certificated by the Government, it is for the most part skilled and semiskilled and completely unionized.

The picture is greatly complicated by conflicting claims for jurisdiction among rival unions.

The individual dry cargo ship operator on the Atlantic coast deals with five offshore unions. The west coast dry cargo operator deals with seven offshore unions. In his onshore operations he deals with nine different unions. This means that a ship operator must keep 16 unions satisfied at all times or his ship is tied up. An individual vessel may be manned by seamen who belong to the Sailors' Union of the Pacific, which is affiliated with the AFL; by the Marine Firemen, Oilers, Watertenders and Wipers' Association, which is an independent union; by the Union of Marine Cooks and Stewards, which is affiliated with the CIO; by the Marine Engineers Beneficial Association, which is affiliated with the CIO; by the Masters, Mates and Pilots, which is affiliated with the AFL; by the American Communications Association, which is a CIO union; and by the American Merchants Marine Staff Officers Association, which is an AFL union. You will thus observe that the vessel will be manned by three AFL unions, three CIO unions, and one independent union.

To further complicate the picture, the longshoremen on the Pacific coast, with the exception of three small ports, are members of the CIO International Longshoremen's and Warehousemen's Union, whereas the longshoremen on the east coast are members of the ILA, which is affiliated with the AFL. In all ports goods are brought to the docks by AFL teamsters. With such a complicated structure of collective bargaining on the union side, it is easy to understand why the shipping industry has been plagued with so much jurisdictional strife. Furthermore, the water front in recent years has borne the brunt of the Communist effort to infiltrate into the American union movement and to create and use industrial strife as a means toward the end of social revolution.

Another factor in labor relations which is peculiar to the shipping industry stems from the Government's interest in shipping and its interference in maritime labor relations. The American merchant marine is an essential element of our national defense. The shipping industry was the first to be requisitioned for all-out war service, and it has not yet been fully reconverted to private operation. During the entire war and, in a large measure, even at the present time opera-

tions of the American merchant marine were and are for the account of the Government. Decisions as to wages, hours and working conditions were and still are being dictated by Government agencies. In other words, the shipping companies are not free agents in collective bargaining in the sense that most industries are. The fact that the unions have felt free to take their demands before Government agencies has encouraged them in making demands which have far exceeded those of many other unions. Comparisons of wage increases granted in the maritime industry, largely as a result of the exigencies of war and governmental control, indicate that union expectation of favorable Government action was well founded.

Since 1939, seamen's wages have increased 150 percent as against an increase of approximately 90 percent in manufacturing industries.

Government regulations prescribe not only the qualifications of a ship's crew, but also fix minimum manning requirements by various classifications. A vessel is prohibited by law from sailing unless it has on board the number of crew members in various classifications which is required by Government regulations.

A strike by any one union not only prevents the sailing of a particular vessel but, in practice, it is likely to prevent the sailing of all vessels in a port because the striking union in an effort to enforce its demands pickets all other vessels. The seaman who works behind a picket line, whether it be that of his own union or even of a rival union, is immediately tarred with the odious appellation of "scab" or "fink," and from then on becomes a marked man. To illustrate, I recall one instance where the vessel was tied up in the port of San Francisco by a CIO longshoremen's picket line because the owner refused to dismiss a sailor who had worked in an eastern port during a jurisdictional strike which had occurred 3 years previously. I recall another instance in which three large freighters were held up for 2 days because a single radio operator struck over a personal grievance and picketed the pier where the ships were moored. Not a single longshoreman would work the vessel. When the lone picket went to lunch he placed a sign reading, "Picket gone to lunch, will be back at 1:30," at the entrance to the pier. Not a single longshoreman or teamster would go through the "ghost" picket line and all operations ceased.

Stability in labor relations is a matter of prime importance to the shipping industry because of its effect upon the offering of cargoes. Dependable service without interruptions is a requisite in the transportation business, whether it be on land or on sea. Because of frequent stoppages of water service and threats of stoppages, shippers have lost confidence in water transportation and give preference to other competing forms of transport. At this very moment when our Nation is extremely short of land transportation facilities, many shippers are hesitating to use our coastwise and intercoastal water services because of their fear of labor disturbances.

It is no exaggeration to say that the future of the American merchant marine depends in a large measure upon stability in labor relations. Unless we can be assured of such stability, the American merchant marine is headed for the same state of decadence and inadequacy into which it fell in the period immediately following the end of the last war. Not only must this country compete against nations which have much lower operating costs but, unfortunately for us, nations which also have fewer stoppages of work. There has not been a serious strike in the offshore British maritime industry in more than 20 years.

The following figures will give you a rough idea of the disadvantage which this country faces in its efforts to maintain an international merchant marine.

Monthly wage bill, Liberty-type vessel

United States flag-----	\$11, 500
Greek flag-----	6, 300
United Kingdom flag-----	4, 300
Norwegian flag ¹ -----	4, 200
Netherlands flag-----	4, 000

¹ Norwegian costs are also the Scandinavian average.

With this background in collective bargaining, I think you will understand why the shipping industry favors the enactment of legislation which is designed to provide greater stability in labor relations.

The industry takes the following positions on suggested legislative proposals:

CONCILIATION AND MEDIATION

The federation favors the establishment of an impartial and independent Federal conciliation and mediation agency. Mediation and conciliation activities should be taken out of the Labor Department. We believe that the Conciliation Service should not only be strictly impartial but that in order to be effective it must be so regarded by both employers and employees. There is no question but what the great majority of employers in this country do not regard the Conciliation Service as conducted by the Labor Department as a strictly impartial agency. We do not believe that the Labor Department, with the best of intentions, can serve in a purely impartial capacity, for the following reasons:

1. The Labor Department is regarded as a protector of labor's interests. By statutory edict one of its functions is to promote the welfare of labor.

2. The Labor Department's conciliators have been drawn largely from the ranks of labor unions. To my knowledge, figures on this point have never been made public, but I am reliably informed that at one time as high as 80 percent of the conciliators on the staff of the Labor Department had at some time held union affiliation. I have no doubt that the vast majority of them owed their appointment to labor influence.

In all fairness to the present administration of the Conciliation Service, I must say that I am advised that the percentage of conciliators with union affiliation has been gradually reduced. I have no information as to the percentage at the present moment.

3. The conciliation technique generally followed by Department of Labor conciliators cannot be considered impartial by the widest stretch of imagination. I can testify from long experience in dealing with actual cases that the procedure commonly followed is for the conciliator to ascertain what the union's minimum demands may be and then proceed to exert pressure upon the employer to accede to these demands. In all fairness, I should say there are exceptions to this rule, as we have had satisfactory experiences with some individual conciliators.

To illustrate this technique: During the shipping strike of 1946 the Conciliation Service attempted to force the employers to agree to a closed shop for the licensed officers on ships. In the course of this controversy the Conciliation Service endeavored to have the Maritime Commission take away all ships from the employers who were refusing to grant this closed shop.

COMPULSORY ARBITRATION

The shipping industry is in favor of any steps to encourage voluntary submission of disputes to arbitration where work stoppages threaten, but it is opposed to any form of compulsory arbitration. As a matter of fact, the industry has gone a long way in establishing voluntary arbitration procedures and machinery. On the west coast, through collective bargaining, we have agreed to the appointment of a standing arbitrator who adjudicates all disputes respecting the interpretation of existing contracts and grievances arising in connection with the administration thereof. We have not, however, delegated to this arbitrator the authority to write our contracts.

In other segments of the industry where no standing arbitration machinery has been provided, our contracts call for arbitration of individual disputes as to the interpretation of the agreement and such other issues as may be voluntarily referred to the arbitrator by the parties. At the present moment the issue of wage rates is being voluntarily arbitrated between the employers and three offshore maritime unions on the west coast, and between employers and the NMU, representing unlicensed personnel on the vessels of many of our east coast operators.

We are opposed to compulsory arbitration for the following reasons:

1. *Certain issues are too vital to be arbitrated.*—Both unions and employers object to compulsory arbitration on the ground that there are certain vital issues which neither can afford to submit to arbitration. Neither party is willing to risk the judgment of outsiders, who cannot be fully acquainted with the problems of labor or industry, certain fundamental rights and prerogatives that must be preserved at all costs. The unions refuse to arbitrate demands of the employers

that they fear might lead to the destruction of the unions. The employers have refused to arbitrate issues that might destroy the essential rights of management. In 1946 the maritime industry, for instance, refused to agree to arbitrate a demand for a closed shop for masters and other licensed officers aboard ship. While the employers were sure of the soundness of their position, they could not gamble that some outsider would correctly analyze the problem and understand the situation.

We have learned from bitter experience that arbitration awards of basic issues sometimes have dire long-time results on labor relations in the field of shipping.

The longshoremen on the west coast were awarded the hiring hall in a decision by the National Longshoremen's Board, which was appointed to arbitrate the coastwise shipping tie-up in 1934. Ever since this hiring hall was established the longshoremen have used it to destroy any loyalty between employer and employee, and to give the union complete control of the individual longshoreman's job, as well as the selection of the men to do the work for the employer. Through this control of the job and the selection of employees, the union has carried on a systematic program for curtailment of production which has resulted in greatly increased costs of operation and costly stoppages of work. With this experience with longshoremen in front of them, the water-front employers in 1939 refused to arbitrate a demand for a hiring hall and rotational employment for supervisory clerks and checkers. Instead of arbitrating, the employers withstood a 50-day tie-up of the port of San Francisco and the union finally abandoned its strike without securing the hiring hall for clerks.

I shall have something more to say later concerning the reasons why employers are so strongly opposed to the closed shop and why they have refused to submit this issue to arbitration.

2. *Compulsory arbitration would destroy the effectiveness of collective bargaining.*—There is no solid basis for collective bargaining if either party can compel the other to go to arbitration. The give and take of collective bargaining would end, and instead you would have all issues submitted to arbitration. In effect, employment relations will be handled by litigation rather than by the exchange of points between persons skilled in bargaining and well acquainted with the relative needs of the employer and the worker.

With compulsory arbitration the unions would know that they could ask for the moon and probably get some of it and certainly lose nothing. If the awards of the arbitrators are to be subject to reopening at frequent intervals, the unions will know that they will have frequent opportunities to make gains. As at result, they will not agree to compromises through collective bargaining because they will be able to compel the employer to arbitrate the issue several times, and will undoubtedly get as much as they would compromise for and probably more.

3. *Arbitration awards are not equally enforceable against employers and unions.*—The history of arbitration, particularly in the shipping industry, has taught us that an arbitrator's award is always binding on the employer and binding on the union only if to the workers' liking. In other words, arbitration is a one-way street, so far as enforcement goes. The same issues have been arbitrated time after time with the west coast longshoremen, and the longshoremen have repeatedly refused to comply with awards they do not like. The employer, on the other hand, must comply, for under State law he is liable in damages and subject to equitable procedure to compel compliance.

Equal compliance by the union could not be enforced, even if compulsory arbitration legislation were supplemented by legislation making the union and every member thereof responsible in law and equity. The courts cannot compel the individual worker to work if he does not wish to.

The experience of the War Labor Board during the war indicates that there is no effective means of compelling a worker or even the union to comply with decisions of an arbitrator. In a desperate effort to keep war production going, the War Labor Board resorted to the extreme and inequitable measure of seizing the employer's plant and turning its operation over to Government agencies.

4. *Ship operators cannot pass their wage increases on to the public.*—Compulsory arbitration is particularly bad in an industry such as shipping where you have rate regulation by independent agencies and unlimited competition in the foreign field. The arbitrators would have unrestricted authority to increase the

labor costs of the employer. In regulated trades the employer is in no position to pass these increases along to the public without approval by the rate-regulatory agencies. The employer will thus be caught between an agency which raises costs, and another agency which desires to hold rates down in the public interest.

In the foreign field we must contend with unlimited and uncontrolled competition. There is therefore no way in which this country can control competitive rates and thereby insure the American operator a sufficient income to meet his increased wage costs.

Because of the highly competitive nature of shipping, there is no possibility that any system could ever be devised whereby shipowners could automatically pass their costs on to the public.

There is such a thing as paying too high a price for industrial peace. The present lack of balance in labor relations has resulted largely from continual yielding by employers and arbitrators to union demands, under pressure of such potent weapons as the secondary boycott and sympathetic strikes. The most stabilizing influence that could be brought to bear on industrial relations would be a few unsuccessful strikes. Continual impairment of the employers' collective bargaining position through compulsory arbitration awards in order to appease labor and continue production is not the solution. This process merely aggravates the basic difficulties in the situation.

CLOSED SHOP

The shipping industry is opposed to the closed shop or any variation thereof which abridges the right of the employer to select and discharge his employees and to determine their capability for the job. Control of the job should not be turned over to a union organization. The employers and the unions can be permitted to set up guaranties against unfair discharge and the employer should be prohibited from discriminating against a workman because he is a member of a union. Most collective-bargaining agreements contain such provisions. Beyond this there should be no compulsion upon anyone to belong to the union, nor should the employer be limited to his choice of employees.

I know of no other industry in which it is so important that the employer should have the right to select and discharge and to determine the qualifications of his employees, as it is in shipping. The licensed officers of a vessel are charged with grave responsibilities, not only by the shipowner but by the Government. They are charged with responsibility for safety of the crew and the passengers. They are responsible for the delivery in good condition of cargoes worth millions of dollars. Dereliction of duty or even a mistake of judgment may subject their employer to enormous claims for damages. The licensed officers of a vessel, likewise, are subject to many statutory regulations which deal with public health and sanitation, immigration, customs, and many other items. A failure to properly observe these statutory regulations can result in severe fines against the shipowner and Government disqualifications of the officers. It is highly essential for the safety of passengers that strict discipline be maintained at all times during the voyage. To all practical intents and purposes, the licensed officers constitute the management once the vessel leaves the port. They have complete control of the employer's plant, valued anywhere from a million to seventy million dollars.

I am sure that you will agree that under these circumstances it is highly important that licensed officers and the executive heads of the departments on the ship must be highly qualified for their jobs, responsible to the employer, and free from dictation by the unions. The employer must have the right to determine their qualifications.

I know of no comparable situation where a supervisory employee exercises such wide functions of management, or has so great authority and responsibility.

The demand for the closed shop springs not from any need of labor unions to protect their members against abuses by employers but from their desire for protection against jurisdictional raids by rival unions. The answer to this problem is not to establish the closed shop but to require that unions avail themselves of the procedures established in the National Labor Relations Act, and comply with the decision of the National Labor Relations Board.

It has been argued that the closed shop is essential to the development of a strong responsible union. There is no merit to this contention. Many of the strongest unions in the United States have never enjoyed the closed shop and

many of the most irresponsible unions have been unions which hold closed shop contracts. In fact, the closed shop is a potent instrument in the hands of an irresponsible union leader for carrying out his objectives.

The railroad brotherhoods generally are pointed out as among the most responsible and strongest unions in this country. The closed shop is prohibited by law in the railroad industry. The unions have grown strong in England and Sweden without benefit of the closed shop. Other illustrations could be cited.

It has been suggested before this committee that the closed shop is a useful means of preventing Communist control of American unions. This is a two-edged sword. In our own industry we have examples where Communists have gained control of union machinery and have controlled the union membership and dictated its policies.

COLLECTIVE BARGAINING FOR SUPERVISORY EMPLOYEES

The shipping industry favors amendment to the National Labor Relations Act to exclude supervisory employees from the definition of the term "employee." Such an amendment would leave the employer free to refuse to bargain collectively with supervisory employees in cases where such bargaining is not in the public interest.

For many of the same reasons that we oppose the closed shop, we are opposed to the compulsory recognition of foremen's unions. The following illustration will indicate the importance of this matter to the shipping industry.

On the west coast the CIO longshoremen's union is demanding that the employers recognize it as the representative of the second level of supervision in the stevedoring industry. The very local union that represents the rank and file longshoremen asks that it also represent the employer's foremen who are the top representatives of management aboard the ship on which stevedoring is being performed. This union of the rank and file workers organized the foremen by coercing and compelling them to join and remain members of the rank and file union. It did so by threatening to "run off the water front" any foreman who did not join the rank and file union. Nevertheless, the Labor Relations Board has held that it may properly certify this longshoremen's union as the representative of these foremen.

If this trend continues it is not inconceivable that eventually we may find maritime labor leaders demanding that all of the employees on a vessel, including the licensed officers, be included in one bargaining unit. In fact, it is my personal opinion that it has been the hope of the promoters of the Committee for Maritime Unity that this end eventually may be achieved. This committee actually did include two groups of licensed officers, to wit, the engineers and the radio officers, in its industry-wide bargaining for all crafts. You can well imagine what will happen to discipline at sea if the masters of our ships ever become subject to the dictation of a union delegate selected by his crew.

We suggest that this legislation should be extended so that the exemption from the term "employee" will include not only supervisory workers but other classes of confidential employees on whose unqualified loyalty the employer must rely. Within this group are watchmen who must police the work and take steps to prevent pilferage and report thefts. The exemption also should include the confidential office staffs of the employers and other workers who have access to information that the union can use to its advantage in collective bargaining or disputes with the employers.

SYMPATHETIC STRIKES AND SECONDARY BOYCOTTS

The federation favors legislation to outlaw all sympathetic strikes and secondary boycotts. Such activities by labor unions injure innocent persons and impede the free flow of interstate and foreign commerce.

By means of a simple device of putting a picket line in front of an innocent third party's plant, or by refusing to handle so-called hot-cargo products, union agents are forcing hundreds of employers throughout this country to obey their bidding irrespective of the merits or legality of their demands.

At this very moment the entire rural community of Rio Vista, Calif., with a population of over 1,300, is being deprived of essential food and supplies because the teamsters union has declared the town "hot," thereby stopping all transport into the city. The entire population is the innocent victim of this ruthless practice.

The President's program on this issue is grossly inadequate. He would apparently permit secondary boycotts and sympathetic strikes to protect wage rates and working conditions. The whole union movement could walk through this loophole. Every jurisdictional dispute, every organizational attempt, and virtually every act ever taken by any labor organization is for the alleged purpose of protecting wage rates and working conditions.

Such a good friend of labor as former Secretary of Labor, Frances Perkins, recently stated that "the secondary strike and boycott, like the sit-down strike, is an unsound weapon for labor to wield." In her official report of June 30, 1941, Secretary Perkins stated that the secondary boycott is a practice deemed by the public to be excessive and not in the public interest.

The shipping industry has had a long history of secondary boycotts and sympathetic strikes. Despite numerous arbitrators' decisions holding that sympathetic strikes and work stoppages are contrary to the longshore agreement, the longshoremen have consistently engaged in sympathetic strikes or secondary boycotts. For example, in the fall of 1946, not a ship moved in or out of the port of Coos Bay, Oreg., because of a sympathetic strike by the longshoremen to compel an employer with an AFL contract for seamen to switch over to the CIO.

We urge that the provisions giving the courts jurisdiction in equity and at law should make specific provision that the jurisdiction will not be devitalized by the limitations on the courts set up in the Norris-LaGuardia Act.

JURISDICTIONAL DISPUTES AND RECOGNITION STRIKES

The federation favors legislation to outlaw jurisdictional strikes and strikes to enforce recognition.

The National Labor Relations Act has established the basic principle that workers should be free to select representatives of their own choosing to act for them in collective bargaining. This act effectively protects the worker against interferences with this freedom by the employer. The worker, however, has no such protection against action by labor organizations to coerce him or otherwise to destroy his freedom of choice. Labor organizations should be expected to organize workers on the basis of what they can do for the worker and other forms of fair and honest persuasion. They should not be permitted to carry on strikes or boycotts that will have the effect of compelling the employer to violate the National Labor Relations Act or his outstanding contracts by coercing his employees to join the union carrying on the strike or boycott.

The pattern in all these cases is the same. There seldom is any dispute between the employer and his employee; there seldom is any issue of wages or hours. In many cases the employer already has been directed by the National Labor Relations Board to deal with a particular union or has recognized such a union through the collective bargaining process. Notwithstanding these facts, the union organizer or the rival union frequently pickets the employer or innocent third parties who furnish him essential supplies or materials. This deliberate circumvention of the peaceful and adequate procedures established under the National Labor Relations Act for the benefit of labor is utterly indefensible.

During the month of October 1946, 38 vessels were demobilized and 1,585 seagoing employees of the United Fruit Co. were made idle by the maintenance of picket lines established by the MEBA at the company's New York piers for the purpose of forcing recognition of this union. These picket lines were established notwithstanding the fact that the MEBA had been rejected as the collective bargaining agent by a vote of six to one in an election conducted by the NLRB. Similar picket lines were placed outside the American Export Lines piers by the MEBA on October 1, 1946, notwithstanding the fact that the National Labor Relations Board had on two occasions declined to certify the MEBA as the collective bargaining agent.

If time permitted I could cite you hundreds of instances of unwarranted stoppages of commerce by such labor tactics.

To fully protect the workers, employers, and the public, it is necessary that the language of section 204 (a) of S. 55 be clarified to prohibit picketing for the purpose of recognition of a union until it has been certified by the National Labor Relations Board. The Board has been established as the agency for peacefully determining who shall be the representative of employees. Its work in this regard should be supported by provisions requiring exhaustion of the Board's procedures before any other steps can be taken to compel recognition.

UNION RESPONSIBILITY

The federation endorses the principle that unions should be equally responsible with employers in law and equity. It therefore favors the amendment of the Norris-LaGuardia Act to make unions amenable to the injunctive process against "unlawful strikes and unlawful practices."

The shipping industry has been plagued by union irresponsibility for years. This irresponsibility is particularly sharp on the west coast where there has been a continuous program of contract violation by the CIO longshoremen's union. The violations have been developed into a program called job action. By their job action program the CIO longshoremen have flouted their collective-bargaining contracts to obtain concessions which they could not obtain over the collective-bargaining table. They have persisted in their violations despite specific warnings by arbitrators that their action is in violation.

During the years of concerted contract violations, the west coast CIO longshoremen have never been penalized. They have been completely irresponsible for their acts. They have held the employer to his side of the collective-bargaining agreement and have refused to abide by their own bargain whenever they choose to seek something better. Over a period of 5 years these longshoremen engaged in more than one thousand "quickie" strikes in violation of their contracts. They have used job action not only to gain collective-bargaining goals, but to further political objectives, to aid other unions in jurisdictional disputes, to compel immigration authorities to permit Chinese crews to come ashore, to establish make-work programs for affiliated groups of workers, and other goals.

Congress can contribute much to industrial stability if it will make certain that unions as well as employers are bound by their collective-bargaining agreements. We ask, therefore, that legal responsibility for contract violations be established with the right of the employer to go to the Federal courts for money damages and injunctions. These remedies must be free of any of the limitations set up in the Norris-LaGuardia Act if they are to be effective. We strongly urge that with respect to all remedial legislation regarding such issues as union responsibility, jurisdictional strikes, secondary boycotts, and various unfair practices of labor organizations, there be specific provision for Federal court jurisdiction, free of any of the limitations of the Norris-LaGuardia Act.

INDUSTRY-WIDE BARGAINING

The shipping industry is opposed to legislation which would prohibit industry-wide or area-wide collective bargaining in the maritime industry. We do not believe that it is feasible to generalize and to assume that industry-wide bargaining is unsound in every industry and under any and all circumstances. We contend that employers should be free to work out their pattern of representation in the light of the particular circumstances which apply to each individual employer's operation. We therefore suggest that the National Labor Relations Act be amended to prohibit the Board from certifying a bargaining unit which covers more than one employer, and to prohibit the Board or any other Government agency from compelling employers to bargain on an area or industry-wide basis.

The NLRB every now and then has certified a union as the sole collective-bargaining representative of a unit comprising the employees of more than one employer, and has thus forced employers to bargain with a union which operates on an area-wide basis. A recent example of such action by the Board is its ruling that all foremen in Oregon and California, and possibly Washington, belong to a single collective-bargaining unit. A similar ruling has been made with respect to supervisory clerks and checkers. However, the bill now before Congress (S. 133) goes much further than a prohibition against the authority of the NLRB to force employers to deal with unions on an area- or industry-wide basis. It goes to the other extreme and renders industry-wide bargaining illegal, except when limited to a hundred-mile area.

We are thoroughly convinced that it is impracticable and inadvisable to apply the provisions of S. 133 to collective bargaining in the shipping industry. We therefore suggest that the bill be amended to specifically exclude collective bargaining in the maritime industry, both onshore and offshore, from its coverage.

We note that the bill is not applicable with respect to any employer or employment subject to the Railroad Labor Act. We assume that the exemption of the railroad industry is based upon the fact that this industry, with one exception,

has enjoyed a long period of stability and peaceful labor relations. It is anomalous that the bill should exempt an industry which has long operated on an industry-wide basis, with an outstanding record of stability and freedom from stoppages of work and at the same time ban similar systems of bargaining in all other industries.

We are convinced that it would be impracticable and inadvisable to prohibit area- or industry-wide bargaining in the shipping industry, for the following reasons:

The enactment of this bill would annul practically every important collective-bargaining agreement in the maritime industry. The ensuing result would be utter chaos in collective bargaining and innumerable jurisdictional disputes. In this connection we should like to point to the following facts which are peculiar to shipping operations.

Many shipping operations are conducted on a world-wide basis, and practically all shipping operations are conducted over an area which is more extensive than that included in the exemption set forth in this bill.

I have already pointed out that the Government prescribes the minimum number of crew members in various classifications who must be on board as a condition to sailing the vessel. The place of employment of a vessel is not localized. There is little continuity of employment. In most cases the men sign on for one voyage only, and are continually shifting from one ship to another and from one employer to another. In the course of the voyage it frequently is necessary to sign on new crew members at various ports in order to meet Government requirements. Crews and replacements are obtained from union hiring halls which have been established in the principal ports. Under such circumstances you can well imagine how impracticable it would be for each ship operator to deal individually with a union which represents only his own employees. The seamen, in order to be assured of any continuity of employment, would have to belong to innumerable individual local unions.

This bill would mean that each steamship company would have to stand by itself and act separately from all others in dealing with the offshore unions. We know, to our sorrow, from past experience what the results would be. There would be a diversity of wage rates and working conditions among ships operated from the same coast, plying between the same ports, tying at the same docks, and employing in turn the same men. Experience has shown that such a condition leads to the playing off of one steamship company against another by the unions, to extreme labor unrest, and eventually to the disruption of steamship operation.

The same sort of problem is presented in respect to shoreside employees. The steamship companies are the direct employers of most dock workers other than longshoremen. In the case of longshoremen, a stevedoring contractor usually intervenes, but longshore labor is so vital to steamship operations that steamship companies, to protect themselves, have found it necessary to join as parties to the collective bargaining contract with the longshoremen's union in many ports. In all ports longshoremen and other dock workers are for the most part casual employees who work for one steamship company or stevedore and then another as their services are required to meet the fluctuations of work at the different docks. It would be utterly impractical, to put it mildly, for each steamship company and stevedore to deal separately with the union and to fix wages, hours, and working conditions independently of the other employers. They would not be protected by the provision permitting joint bargaining within a hundred-mile area for the simple reason, if for no other, that many longshoremen and other dock employees work beyond a hundred-mile area. Thus, for example, longshoremen are dispatched from Seattle to various outlying ports, several of which are more than a hundred miles away. Similarly longshoremen are dispatched from Portland to various outlying ports more than a hundred miles away.

The provisions of this bill would not preclude the possibility of area-wide or Nation-wide strikes in the shipping industry. Only last fall we witnessed a Nation-wide tie-up of shipping which was in no way related to industry-wide bargaining. Our Nation-wide maritime strike of last September was caused by sympathy strikes by a number of individual unions in support of a strike by the sailors' union of the Pacific against a ruling by the NLRB. The reluctance

of maritime labor to work behind the picket line, even though it may be established by a rival union, makes it possible for any local union to tie-up an entire port or even shipping on a much wider area.

The experience of both Great Britain and Sweden, as well as our own experience in the railroad industry, demonstrates that area-wide or national strikes cannot be charged against industry-wide bargaining. As previously stated, there has not been an offshore maritime strike of any consequence in British shipping in more than 20 years.

We doubt whether the prohibition against industry-wide bargaining would impair the strength of unions or their ability to tie up entire industries, including our own.

There is nothing in this bill which will prevent individual unions from adopting the "follow the leader" technique which they have employed so effectively in the steel industry.

There is nothing in the bill which would prevent individual unions from enforcing demands for common termination dates. In fact, this program already has been achieved to a considerable degree in many industries. Once common termination dates have been established, it would be a simple matter for the unions to tie up an entire industry, without being penalized for engaging in conspiracy in violation of the act.

There is nothing in the bill to effectively prevent the locals of a national labor organization from adopting common policies and objectives with respect to wage increases or working conditions.

There is nothing in this bill which would prevent a union from assisting another union financially, or by means of sympathetic boycotts or strikes. In other words, the bill would have little practical effect in curbing the economic power of labor unions.

On the other hand, the bill undoubtedly would weaken the relative position of employers in collective bargaining. We have learned from bitter experience in shipping and many other industries that effective employer organization is essential in order to keep a proper balance in the collective bargaining process. This bill apparently recognizes the advantages of group bargaining, for it permits group bargaining in a restricted area. We contend that the same benefits which accrue from the community-wide bargaining, which this bill permits, will result from group bargaining on an even larger area in the shipping industry.

The abrogation of our present contracts would mean the discontinuance of established machinery for voluntary arbitration and adjustment of grievances on a group or area basis. This would be a step backward. On the west coast, coast-wide joint employer-employee committees have been established to handle grievances and to interpret the contract and working rules. A standing arbitrator has been appointed to adjudicate disputes which cannot be resolved by this joint committee. Under this system of area administration we are developing a uniformity of interpretation and precedents which tend to minimize the number of disputes and stoppages of work.

On the east coast various groups of employers negotiate jointly with the unions and sign individual but identical contracts. The provisions of this bill would preclude joint arbitration on an area-wide basis under these identical contracts.

Obviously, the advantages of any area system of joint administration and adjudication of grievances would be minimized if the coverage of our contracts were reduced to the local areas proposed in S. 133. A break-down of our joint collective bargaining systems in shipping would vastly multiply the focal points for disputes arising not only out of negotiation of agreements, but also the day-by-day disputes on the job. The sum total of interruptions of service, on account of job action and "quickie" strikes is a matter of great concern to the public. It is in the public interest to continue and strengthen established mechanisms for adjudicating these day-by-day interruptions of commerce on as wide an area or group basis as possible. In the long run these disputes which tie up individual ships, individual piers and local ports, have proved more disastrous to shipping and to commerce than national tie-ups.

It has been argued that industry-wide bargaining will result in monopolistic price fixing through the collusion of large groups of employers and large unions. This objection to industry-wide bargaining has no possible application to shipping. Domestic shipping rates are subject to control and regulation by the I.C.C. Rates on traffic by subsidized lines in the international trade are subject to the approval of the Maritime Commission. International shipping rates generally

are fixed by keen competition among many maritime nations. It will thus be seen that it is impossible for the shipping industry to manipulate shipping rates through connivance with national maritime unions.

The proper remedy for monopolistic abuses by either unions or employers is to make them both equally subject to the antitrust laws rather than a ban on industry-wide bargaining.

Senator MORSE. We will recess until 2 o'clock.

(Whereupon, at 12 o'clock noon, a recess was taken until 2 p. m.)

AFTERNOON SESSION

(The committee reconvened at 2 p. m., pursuant to recess.)

The CHAIRMAN. The committee will come to order. The first statement will be made by Mr. Evans, president of the Evans Products Co., Detroit, Mich.

Mr. EVANS, you are one of a number of witnesses representing the Nonbasic Steel Coordinating Committee.

Mr. EVANS. That is right, sir.

The CHAIRMAN. What is your plan, to present a number of statements, or what?

Mr. EVANS. I have a general outline, Senator, concerning the plight of these nonbasic steel companies. Also, we have four or five men who are present from our companies who would like to explain their particular circumstances and the troubles that they have had; their testimony will be brief.

The CHAIRMAN. All right, you may proceed.

Mr. EVANS. Thank you, sir.

STATEMENT OF E. S. EVANS, JR., PRESIDENT, EVANS PRODUCTS CO., DETROIT, MICH., ACCOMPANIED BY MILES H. KNOWLES, GENERAL COUNSEL, NONBASIC STEEL COORDINATING COMMITTEE

Mr. EVANS. Mr. Chairman and members of the committee, my name is Edward S. Evans, Jr. I am president of the Evans Products Co. of Detroit, Mich. I appear here as chairman of the Nonbasic Steel Coordinating Committee, which is composed of 258 small miscellaneous businesses scattered in some 30 States.

I would like to offer at this point pictures of the various products that these companies manufacture.

The CHAIRMAN. They will be filed with the committee.

Mr. EVANS. Thank you, Mr. Chairman.

The committee's member companies make a wide variety of products ranging from sandpaper to street cars and from cutlery to locomotives. These companies have associated together in our committee for just one purpose—to obtain the right for individual companies to have their local and competitive problems considered in the course of collective-bargaining proceedings.

None of these companies produces steel. Although most of them use the products of the basic steel industry in raw or fabricated form, they are not a part of the steel industry. They are no more in the steel business than a wheat farmer is in the bakery business.

Our committee appears here in support of certain principles of S. 133 and S. 360.

We oppose union-wide bargaining.

We believe the Congress must clearly define by law the responsibilities of parties to collective bargaining procedures.

We seek relief from the campaigns of the United Steelworkers of America, CIO, which force our members to conform to wage settlements and other contract provisions arrived at in an unrelated industry—basic steel.

Our group of miscellaneous companies does not under the widest stretch of the imagination constitute an industry as I understand the term.

There is no such thing as a steel fabricating industry.

Instead of comprising a single industry, they are engaged in dozens of different and unrelated industry lines, such as bedding, textiles, cutlery, machine tools, earth movers, cement products, and structural steel.

The only thing they have in common is a labor contract with the United Steelworkers of America, CIO, as bargaining agent for their employees. The United Steelworkers of America, CIO, has also organized the basic steel plants of the Nation. By basic steel I mean only those companies that produce steel.

The union has refused to bargain with the miscellaneous companies on wages and other issues.

It struck their plants when it shut down basic steel.

When basic steel reached an agreement, the terms were handed to the miscellaneous companies for compliance or else, the "or else" being a continuation of the strikes.

This "collective bludgeoning" completely ignores the nonbasic company's competitive and local conditions. It ignores the fact that its competitors have different unions and different wage costs. It ignores the company's marketing problems, geographical location, existing wage rates, past wage increases, or any other factors bearing on the company's ability to survive. All the union considers is the fact that the company's employees are members of the United Steelworkers of America, CIO.

The result is that the nonbasis steel companies have had to follow basic steel on wages and their own competitors on prices.

There are about 1,100 miscellaneous companies in the Nation whose factory workers are organized by the United Steelworkers of America, CIO. All 1,100 have been subjected to this type of bargaining. Nine-tenths of them are what Congress would characterize as small businesses. They are scattered in 30 some States. Many are concentrated in industrial communities large and small. Most of the miscellaneous companies are located in small communities such as Kalamazoo and Bay City, Mich.; Dunkirk and Jamestown, N. Y.; Hagerstown and Albany, Ind.; Pine Bluff, Ark., and Highbridge, N. J. In Warren, Ohio, such miscellaneous companies account for 75 percent of the community's income. In Medina, Ohio, one company alone creates 27 percent of the community's income. You can appreciate the injury suffered by these communities when those plants

are shut down with needless strikes. The effects are felt by every business and inhabitant.

In 1944 the union hailed all these companies before the National War Labor Board and attempted to include them within the jurisdiction of a panel which had been set up for basic steel. The miscellaneous companies protested. The Board, recognizing the differences between the two groups, agreed that they should be separated from basic steel, and their cases were referred back to regional boards.

In the fall of 1945 the union ignored the Government's distinction between the two groups. When the union made its demands on basic steel the same demands were served on the miscellaneous companies. When miscellaneous companies asked for the opportunity to bargain they were told to wait until basic steel settled. Some companies offered to arbitrate. The union refused. As a top union official expressed it in 1944, the miscellaneous companies were being "kept on ice."

On January 21, 1946, the steel strike started and the basic steel industry was shut down. The miscellaneous companies went down at the same time even though they had had no opportunity to bargain on the demands. They had to endure strikes because basic steel and the union had been unable to reach an agreement.

The CHAIRMAN. Who was the bargaining agent in each of those cases?

Mr. EVANS. The CIO.

The CHAIRMAN. The CIO international union was the bargaining agent?

Mr. EVANS. That is right.

The CHAIRMAN. And not the local union?

Mr. EVANS. The local unions were not permitted to bargain in this particular instance. They had their orders from Pittsburgh—that they were not to accept any terms whatsoever.

The CHAIRMAN. I understand that, but I want to know if they had been certified by the Labor Relations Board; I want to know who had been certified.

Mr. EVANS. The international, not the local.

The CHAIRMAN. In every case?

Mr. EVANS. In every case that I know of; yes, sir.

The CHAIRMAN. All right; proceed.

Mr. EVANS. Gentlemen, I don't have to refresh your memories about the disastrous effects of last year's steel strike. You probably do not recall, however, that 1,100 of the companies shut down did not produce steel—that 350,000, or nearly half of the 800,000 employees on strike, were not engaged in the basic steel industry but in numerous unrelated industries which produced no steel.

Basic steel settled on February 15. It agreed to pay 18½ cents at the recommendation of President Truman—after it had been guaranteed price relief.

The union then handed the terms of the basic steel settlement to the 1,100 nonbasic companies for compliance—or else. The miscellaneous companies had no guaranty of price relief. Nor would the union bargain. The fact that the nonbasic companies had competi-

tors not faced with the same wage demands, because they had different unions or no union, was ignored. As a result, the bulk of the strikes in nonbasic plants continued through March with some settlements coming as late as July.

The union claimed President Truman's 18½-cent recommendation was intended to apply to nonbasic companies as well as basic steel. The nonbasic companies sought and obtained clarification from the President.

As a result of a conference on March 4, 1946, in which the President met with a committee representing the miscellaneous companies, the President announced publicly that the 18½-cent increase applied only to basic steel, that it was not intended to apply to the miscellaneous companies, and he recommended that their strikes be settled by negotiation.

Mr. Philip Murray, president of the United Steelworkers of America, CIO, immediately charged the President with "committing a serious disservice to industrial peace." The union refused to negotiate, it continued to demand 18½ cents, and it continued the strikes.

Efforts by our committee to have the President's announced policies put into effect were fruitless. Every agency concerned with labor matters, including the Conciliation Service, was contacted. The answer was always the same. Government could do nothing to enforce its policies. The union was not legally bound to follow them and publicly stated it would not abide by the President's recommendation.

Now, why did the union do this?

We cannot speak for the union, but it is probably easier to make one wage demand and require over 1,100 companies to fall in line with its terms than it is to make a different wage agreement with each of those companies individually. Presumably, it is less costly to the union treasury. In addition, basic steel can be subjected to greater pressure to settle when the termination of 1,100 strikes depends upon that settlement. The benefits to the union compare with those accruing to anyone in control of a monopoly.

Why was the union able to do this?

The answer lies partly in the rigid control the international union exercises over its locals in matters relating to demands and strikes. It lies partly in the law which compels employers to bargain collectively, which gives employees the right to bargain collectively, but which allows unions to bargain or not as they please.

Why do we oppose bargaining that ignores local conditions?

We oppose it because it violates the American principle of giving citizens a voice in decisions vitally affecting them. The 18½-cent basic steel settlement was arrived at in conference between Benjamin Fairless, president of United States Steel; Philip Murray, president of the United Steelworkers of America, and President Truman. No consideration was given to the individual employees or the individual circumstances of the miscellaneous companies holding contracts with United Steelworkers of America, CIO. President Truman made this clear when he later said his recommendation of 18½ cents applied only to basic steel.

The CHAIRMAN. Wasn't there a letter, however, that Mr. Murray had from some Government official that he showed around that said it would apply to the nonbasic steel?

Mr. EVANS. That is correct, sir, but on March 8, the President, President Truman, came out and reiterated his stand, in which he said that it did not apply to these small companies; they should negotiate and go back to work. However, it is true that there was such a letter as that.

The CHAIRMAN. Thank you.

Mr. EVANS. We oppose such union-wide bargaining because it results in needless unrest and strikes. Our members are convinced that the strikes in their plants last year could have been avoided if they had been allowed the opportunity to bargain at the local plant level.

Strikes mean the loss of true wealth—production.

They are hardest on employees and the communities affected. They are severe for employers and stockholders. It is impossible to estimate the dollar loss suffered by the Nation as a result of those strikes.

We oppose union-wide bargaining because it imposes on employees and employers arbitrary wages and working conditions without consideration for their competition, their local problems, or the public's interest in having their products at the lowest possible price.

As I pointed out earlier, these miscellaneous companies are unrelated to basic steel. They all have competitors. Most of their competitors are organized by unions other than United Steelworkers of America, CIO. Some have no unions at all. Wage increases forced on miscellaneous companies without regard for their competition may force them into mergers or out of business.

I may interject here, Mr. Chairman, that if these small companies had been paying \$5 an hour at the time of the strike, they would still have gone on strike. They would still have been called out.

Their ability to compete means their ability to survive. There is no magic in industry. Increased manufacturing costs mean increased prices.

Let me stress that the miscellaneous companies are not claiming that they should be permitted to stay in competition at the expense of their employees. None of them seeks any special privilege. They do request, however, that wages be determined in the light of local realities.

We oppose union-wide bargaining because it is monopolistic.

We oppose union-wide bargaining because it is contrary to the intent expressed by the Congress itself, as indicated in the congressional debates preceding the passage of the Wagner Act.

The debates clearly show that the legislators intended collective bargaining to be the rule for both parties in the settlement of labor disputes. Admittedly, employers generally had been unwilling to abide by this principle. The Wagner Act compelled them to do so.

It was assumed by Members of both Houses that unions would always exercise the right to bargain once it was assured by law. Not one legislator conceived the possibility of a union refusing to bargain. The imposition of a duty on unions to do so was never

considered. That is why the United Steelworkers of America, CIO, can substitute strikes for bargaining with immunity.

The debates also reveal clearly how Congress thought collective bargaining should be carried on. Senator Walsh, who was then chairman of this committee, said the sole purpose of the Wagner Act was—

* * * to lay a foundation of machinery for getting a proper representation of employees at the door of the employer to discuss and argue out their difficulties.

The United Steelworkers of America, CIO, did not give these miscellaneous companies such an opportunity last year. The miscellaneous companies are now being asked by the union to extend their labor contracts until after basic steel has settled. This apparently means the union again plans to make the basic-steel pattern apply to all of these miscellaneous small companies.

What should be done?

It appears that the union will not change its policy unless it is compelled to do so.

Even if it voluntarily changed its policy, its power to strike these miscellaneous companies—with no pretense of collective bargaining—would remain undiminished.

This power must be curbed.

Legislation is necessary.

First, Congress must define clearly by law what is meant by the phrase "collective bargaining." The air is full of praise from labor and management alike for the value of collective bargaining, but you gentlemen know better than anyone else how widely their interpretations of that phrase differ.

A law spelling out what Congress means by collective bargaining is unlikely to suffer a Presidential veto, for the President in one of his recent messages stated that one of the main reasons for industrial strife has been, and I quote: "* * * lack of order in the bargaining process." He recommended that the Congress determine the best method of carrying out collective bargaining.

We support section 5 (c) of S. 360, which specifies some of the practices properly within the meaning of collective bargaining. We recommend that this section be amplified to make the definition more specific and complete. The law should require that parties to bargaining procedures—

1. Evidence intent to reach an agreement mutually beneficial to the employer, employees, and the public served by the enterprise of which they are a part;

2. Evidence intent to bargain sincerely and in good faith and to discuss freely and fully their respective claims, demands, and refusals;

3. "Good faith" should mean regard for relevant facts.

Labor and management publicly agreed upon the foregoing at the November 1945 conference convened by the President.

If our competitive economy is to retain its vigor, relevant facts must include a company's competitive and local conditions. This should likewise be spelled out in the statute.

Support for this recommendation is also included in one of the President's messages. He stated, and I quote:

* * * there can be no uniform rule relating to wages. * * * Wage adjustments, like price adjustments, need to be made with a discriminating regard for individual situations throughout the economy.

We support section 5 (b) (1) which imposes a duty on a union to bargain collectively. You have seen how the United Steelworkers of America, CIO, has been able to refuse to bargain with immunity. The National Labor Relations Board has interpreted the Wagner Act to mean that it has no jurisdiction over an employer's petition to require a union to bargain. The rights of both parties to require each other to bargain collectively must be equalized.

We recommend that this section be made stronger by affirmatively stating that it shall be the right of employers to have their competitive and local conditions considered in the course of collective-bargaining proceedings.

By clearly defining the requisites of collective bargaining, we will to a large extent eliminate the many interpretations and definitions of collective-bargaining principles resulting from changing personalities in administrative agencies. In short, we will return to government by law instead of by men.

A law establishing these responsibilities on both parties should also be acceptable to the President, for in one of his messages to this Congress he stated that the collective-bargaining process should include, and I quote:

* * * the responsibilities of labor and management to negotiate freely and fairly with each other and to refrain from strikes or lock-outs until all possibilities of negotiation have been exhausted.

Rights are meaningless if they cannot be enforced. Therefore it is equally as important that legal sanctions making these rights secure be included in the statute.

Our problem arises out of a form of union-wide bargaining. Last year's strikes were run by remote control from the headquarters of the United Steelworkers of America, CIO, in Pittsburgh. None of the local unions could settle without the express approval of the contract by the international union headquarters. And that meant it had to be 18½ cents.

At this point, Mr. Chairman, I would like to recite the experience of one small company employing, I believe, 30 or 40 or 50 men in Kalamazoo, Mich., which company is known as the American Tool & Die Co.

This company negotiated with its local and the district representative of the international union in what you might term true collective bargaining. They had paid, prior to this strike, 4 cents, so they bargained together. They decided that they would subtract this 4 cents from the 18½ cents and make a contract.

Now, the contract was entered into in good faith and it was signed by the local representative of the international and signed by the complete officers of the local union.

Then it was sent in for ratification at Pittsburgh. The following telegram was sent back to the company, which I should like to read to you, if I may.

The CHAIRMAN. Yes.

Mr. EVANS. This is what it reads. This is addressed to Charles L. Cowl, subdistrict director, United Steelworkers of America. It is dated March 5, 1946.

The proposed stipulation and new agreement to cover settlement of our wage dispute with the American Tool & Die Co. is unacceptable, and no settlement of the wage issue can take place except upon the basis of 18½-cents-per-hour increase for all employees as approved in the policy committee meeting in Pittsburgh February 22. The above proposed stipulation and new agreement is therefore rejected.

That telegram was signed by Thomas Shane, director, District No. 29.

Now, that is the type of collective bargaining that has been going on.

S. 133 is designed to break the rigid control that has been exercised by international unions over locals on matters relating to negotiations, strikes, and contract provisions. We support that principle wholeheartedly.

Section 5 would make it unlawful for the United Steelworkers of America, CIO, to coerce a local union or agree with a local union to undertake to include in any collective-bargaining agreement any particular terms or provisions relating to wages, hours of work, or any other conditions of employment. This would help prevent a recurrence of the situation last year when miscellaneous companies were blanketed with an 18½-cent increase without regard for individual circumstances.

Other sections of S. 133 would prohibit Nation-wide bargaining by limiting geographically the areas within which a union could act as bargaining agent for the employees of two or more employers. Those particular provisions apply to employees "in the same industry or activity," and we interpret that this provision would not apply to employees of nonbasic companies since they are engaged in a wide variety of activities and do not constitute an industry.

We recommend that the statute clearly specify that section 5 applies to companies not in "the same industry or activity" as well as companies in the same industry or activity. This would prevent exclusion of miscellaneous companies from the benefits of section 5 by a court's literal interpretation of the statute as a whole.

We further believe that the inequities suffered by miscellaneous companies can be substantially eliminated if the Congress will, first, clearly define by law what constitutes collective bargaining and, second, by granting employers the affirmative right to have their local and competitive conditions considered during collective-bargaining proceedings.

With the changes we have suggested in S. 133 and S. 360, we believe these objectives can be accomplished.

Other groups will appear before you in behalf of other remedies which are needed. However, if and when representatives of the United Steelworkers of America, CIO, appear before your committee, they may attempt to deny that the union has meted out treatment to the miscellaneous companies as I have outlined it here. I respectfully refer you to testimony given by an official of the United Steel Workers

of America, CIO, before the House Labor Committee on July 15, 1946.

His representations to that committee were not in accord with the facts, as I have related them to you.

The consensus today seems to be that there are no large-scale strikes in the offing. I sincerely hope this is true. However, I believe the present quiet in labor-management relations is due to the fact that this Congress has clearly indicated its intent to enact legislation designed to prevent a repetition of the strikes which adversely affected the public interest last year.

You must not be misled into thinking that the present calm is any assurance for the future.

The truth is that the unions' power to halt the Nation's industrial machine at will is as great as ever. The existence of the power and the unions' inclination to use it when it serves their purpose were amply demonstrated last year.

The mere existence of such a power is sufficient grounds for its regulation.

I recommend that in dealing with this problem the Congress keep in mind the fact that in addition to shut-downs affecting one industry, such strikes have also cut across industry lines. The history of the strikes against the miscellaneous companies in our group is adequate evidence of the seriousness of this latter situation.

I would like to emphasize to you gentlemen that the nonbasic companies are not asking for any harsh or extreme legislation that would be injurious to labor and to the welfare and economy of the Nation. We do not desire repressive legislation. All we are seeking is to correct the inequities that exist and threaten the existence of the competitive system.

We believe wholeheartedly in the competitive system. We believe that everything we have requested is essential if that system is to survive and continue to provide our people with the highest living standards in the world.

In addition to the specific amendments we have suggested to S. 133 and S. 360, we believe that in order to accomplish the principal objective of the miscellaneous companies, namely, the return of collective bargaining to the local plant level, Congress should guaranty employers' freedom of speech, and require the use of the secret ballot by employees on union strike votes. It is essential that the local unions have the right to settle their own contracts without interference from the international union. To make this effective, union monopolies must be prohibited, along with coercion as a weapon to influence collective bargaining.

I would like to state also, Mr. Chairman, at this point that of the miscellaneous companies, some 1,400 of them, that between 900 and 1,000 of them, whose contracts have not yet run out, have received strike notices, to date, from the Department of Labor, stating that a dispute exists between the parties and suggesting the services of the Conciliation Service.

The CHAIRMAN. When did the contracts expire?

Mr. EVANS. They have not yet expired.

The CHAIRMAN. When will they expire?

Mr. EVANS. In our particular case, that is, my company's case, our contract expires in the middle of March, and we have already received the strike notice, through the Department of Labor, in January.

The CHAIRMAN. Although there are no negotiations involved as yet?

Mr. EVANS. That is right. In other words, they are using that as a sword over our heads for the coming negotiations.

The CHAIRMAN. You say you received a notice from the Department of Labor; do you mean that the Conciliation Service is offering its facilities?

Mr. EVANS. No. The Department of Labor sends out a notice telling you that a union said that there is a dispute between your company and the union which may result in a work stoppage—

therefore, if you have any further trouble, we suggest that you get in touch with the Conciliation Service, which may be able to give you some sort of help.

The CHAIRMAN. And those companies have received such notice?

Mr. EVANS. They have received those under the Smith-Connally Act—30 days' notice.

The CHAIRMAN. I see.

Mr. EVANS. Those telegrams stating that a strike notice had been filed had been sent to the company before, even when the contracts were not in negotiation.

The CHAIRMAN. All right, sir.

Mr. EVANS. Unions must be prohibited, when dealing with miscellaneous companies such as ours, from bargaining across industry lines. When the contract has been agreed to between employer and employee the law should require that the sanctity of the contract be respected by both parties.

The views expressed by me in this presentation on behalf of the Nonbasic Steel Coordinating Committee are concurred in by the Tri-State Association, which represents some 150 companies.

Also, they are concurred in and supported by the Smaller Manufacturers' Council in Pittsburgh, representing some 200 companies. So, instead of 258 companies, we are speaking, roughly, for about 600 companies.

The CHAIRMAN. Proceed, Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman, for your courtesy in allowing me to bring the plight of the miscellaneous companies comprising the Nonbasic Steel Coordinating Committee to your attention and allowing us to recommend the solutions we believe are required. So much for the over-all picture.

Now, with your permission, Mr. Chairman, I will introduce Mr. A. V. Murray, who is president of the Scaife Co., Pittsburgh, Pa. Mr. Murray is also vice president of our committee.

The CHAIRMAN. Very well. Senator Smith will preside in my absence.

Senator SMITH. Thank you, Mr. Evans, for your statement. We are now ready to hear Mr. Murray. Mr. Murray, will you tell us what page you begin your statement, in this compilation?

Mr. MURRAY. Page 38.

STATEMENT OF A. V. MURRAY, PRESIDENT, SCAIFE CO.,
OAKMONT, PA.

Mr. MURRAY. Mr. Chairman and members of the committee, I am A. V. Murray, president of Scaife Co., Oakmont, Allegheny County, Pa.

Scaife Co., presently employing 850 employees, is part of the pressure-vessel industry. We manufacture steel pressure tanks to hold air, gases, and liquids.

Oakmont is a borough on the outskirts of Pittsburgh, and is the center of a separate, integrated community of approximately 12,000 persons. We draw on labor supply principally from the local area and its surrounding localities, which is a common labor pool for several large corporations.

While over 80 percent of our raw materials are steel products, we have no other connection, either direct or indirect, with the basic steel industry. We are fabricators rather than producers of steel.

Our company was formed in 1802. I believe it is the oldest manufacturing company west of the Alleghenies.

On April 10, 1937, our shop employees were organized by the United Steelworkers, CIO. From 1802 to 1937, a period of 135 years, there were no strikes at our plant.

The first strike resulted from the organizing activities of the United Steelworkers, CIO, in the spring of 1937. Since that organization strike, we have experienced seven additional strikes and walk-outs by our employees ranging from 1 day to 8 weeks in duration. Four of the stoppages were considered illegal by the union.

During 1946 our plant was shut down for 17 out of 52 weeks because of strikes, 8 weeks being due to the steel strike in which our own employees participated, 5 weeks being due to lack of steel resulting directly from the two coal strikes, and 4 weeks being due to lack of electricity caused by the Pittsburgh power strike.

We don't want—in fact it is doubtful that we could survive—a repetition of 1946.

I might state here that while other companies seem to have done very well financially during 1946, we experienced the greatest loss in our history.

From 1937 to 1941 we blindly followed the so-called Big Steel wage and contract pattern. In 1941, we realized the damage to our competitive position and thereby our ability to stay in business which this policy had already caused. We strenuously objected to continuing that policy on the grounds that our products as well as our processing and marketing methods and problems are entirely different from those of steel producers.

This objection was halted by the war because our conversion to the manufacture of munitions, which constituted over 90 percent of a tenfold expansion in output, placed us in direct competition with steel producers which were also making munitions. We had no other choice than to acquiesce in National War Labor Board directives which continued to impose the Big Steel pattern upon us in the interests of the war effort.

On October 12, 1945, we met with representatives of the union to discuss their demands for a 25-cents-per-hour wage increase. By mutual consent further discussion was deferred pending clarification of the national wage policy and future steel prices. Between that date and January 21, the date the steel strike started, our "negotiations" with the union consisted of being given the opportunity of refusing to accept the same wage increase as granted by United States Steel even though the amount of that increase was not agreed upon until shortly before February 15, 1946.

No consideration was given by the union to the fact that, unlike United States Steel and other steel-producing companies, we were not assured of simultaneous OPA price relief with the granting of a wage increase. We were expected to absorb both a wage and steel price increase without price relief. No consideration was given to the fact that we had to have price relief because selling prices for 1941 level, coupled with increased costs, were already resulting in losses.

No consideration was given to the fact that our customer relationship was suffering because a majority of our hundred-odd competitors, including 7 of the 12 major ones in other areas of the country, were not on strike. No consideration was given to our offer to compromise at less than 18½ cents per hour in order to resume work pending the obtaining of price relief. No consideration was given to the major reconversion problem which faced us and involved replacement of reconditioning of a major part of our equipment. No consideration was given to the fact that we had gone all out during the war in the production of munitions while many competitors had not and therefore had no reconversion problem. No consideration was given to the fact that many of our competitors already had lower wage scales.

Nor was any consideration given to the fact that six major customers had prepared or were preparing to make their own tanks. No consideration was given to added competition thus increasing the risk of pricing ourselves out of the market.

All of those things, those relevant facts, had, and have, a direct bearing on our ability to stay in business and provide jobs.

We didn't even have the opportunity to give a full explanation, let alone supporting facts to the committee which represented our employees because that committee informed us that it had no authority to deviate in the least from the demands promulgated by the national headquarters. None of these demands was formulated through negotiations with us.

We had no way of telling what the effect might have been on our employees had all of these facts been presented to them, or even what little information was presented to their committee, with which we were bound to deal exclusively.

This situation has led us in the companies to believe that present labor regulations must be amended to:

1. Specifically restore the right of free speech to management in order that full disclosure of the relevant facts may be made to all employees without the risk of being cited for unfair labor practices.

2. Make both parties to a labor contract legally liable with adequate punitive provisions to effectively deter irresponsible acts committed by individuals or groups of individuals both within and without the organization.

3. Devise some means which will assure that the authorized representatives of a union are empowered to negotiate freely with a company in the light of that company's local and competitive conditions, which conditions have such a vital bearing on that company's ability to stay in business and provide jobs. Such representatives must not be restricted by the principles of union-wide bargaining which results in the imposing on a company the inflexible predetermined demands which arise out of contract negotiations of other companies in which the company has had no part.

4. Devise means to eliminate the real coercive threat which arises through regulations permitting the filing of a strike notice 30 days or more before the termination of a contract, which notice is often filed before negotiations commence. An instance of that has been recited by Mr. Evans. Such strike notice and the required time interval before a strike is called should only come after negotiations have reached an impasse or the termination date of the contract has been reached, whichever comes first.

Mr. Chairman, I appreciate the courtesy of your committee in allowing me to present these facts and recommendations this afternoon.

Senator SMITH. Do you think, with regard to that last point, that that practice was brought about by the Smith-Connally Act, the provision concerning strike notices in that act?

Mr. MURRAY. I do, sir, but I believe the cart is still before the horse, because then they can start negotiations with us, with the threat of a strike hanging over our heads, which threat is, for a small company such as ours, which does not throw any weight with a national union, it represents a very strong coercive threat—we settle or they walk out, there is no chance for a second breath for us.

Senator ELLENDER. How many employees do you have?

Mr. MURRAY. About 850 now, Senator.

Senator ELLENDER. Are they all unionized?

Mr. MURRAY. About 60 percent, I believe.

Senator SMITH. Have you had the closed-shop issue up at your plant?

Mr. MURRAY. No, Senator; they are asking for it.

We have maintenance of membership and we have the check-off similar to the big steel companies, imposed by the National War Labor Board.

Senator SMITH. Do you have any comments to make about the closed-shop issue?

Mr. MURRAY. As an individual, I will put it this way: that if the tendency which has been shown by our union representatives were to be continued, under a closed shop I think it would be very detrimental both to us and to the employees.

Senator SMITH. Well, have you had any difficulty in your plant through having some of your members belong to the unions and some of them not? Has that been detrimental to your labor relations?

Mr. MURRAY. In the early stages, yes, Senator. There were quite a few attempts to get everyone to join. More recently, there has been less of that.

Senator SMITH. Are there any other questions?

Senator DONNELL. I would like to ask a question.

Mr. Murray, in your testimony you stated that between October 12, 1945, and January 21, 1946:

* * * our "negotiations" with the union consisted of being given the opportunity of refusing to accept the same wage increase as granted by United States Steel, even though the amount of that increase was not agreed upon until shortly before February 15, 1946.

Am I correct in understanding by that statement that you were told in advance that you had the opportunity of accepting or refusing a wage increase, the amount of which had not yet been determined?

Mr. MURRAY. Yes, sir.

Senator DONNELL. Now, your business is not that of producing steel, is it, Mr. Murray?

Mr. MURRAY. No, sir.

Senator DONNELL. Your business is that of manufacturing steel pressure tanks to hold air, gases, and liquids?

Mr. MURRAY. That is right.

Senator DONNELL. And I believe you said you employ about 850 employees; is that what you said?

Mr. MURRAY. Yes, sir.

Senator DONNELL. Does it always follow, in your opinion, that the same wage increases that would be properly applicable to the large steel-producing companies would necessarily be likewise applicable to a company the size of your company, a company which is not engaged in the production of steel but merely in the production of equipment made from steel?

Mr. MURRAY. No; it does not necessarily follow. I think, however, that I have a point that would indicate that even a small concession was not granted.

We draw our labor from the same area as the steel producers. We realize that even if we paid one-tenth of a cent less than the steel producers, we would suffer, we would have inefficiency and difficulty in obtaining labor.

During the course of this last strike, due to the fact that we were unable to move our prices up as the steel corporations did when they got the price increases—you see, Senator, even in normal times, we must guarantee our customers a price for 6 months or more because they, in turn, are incorporating our products into their products, therefore requiring a uniform price over-all—as I started to say, we asked the union if we could not stagger this 18½-cent increase over a period of 3 months for each increase.

In other words, we asked them if we could not make it 6 cents for 3 months; 6 cents more for another 3 months, and 6½ cents for the next 3 months, in which way we could bring our prices up to compensate for that.

We also suggested during the course of the negotiations, or discussions with them, if they would remain working at the same rate, if they

would return to work first of all at the same rate until we had price increases and then we would meet the steel increase.

We asked them, later on, after they had been on strike for several weeks, would they come back at an additional 5 cents an hour, until we could get price relief. At that time there was no certainty that we would get price relief.

Now, you might say that that condition has gone by the board now, because the OPA is out, but we are still in a very strong competitive market. We have over 100 competitors, we are not like the basic steel industry, who have possibly 17 or 18 competitors.

Senator DONNELL. May I submit this further question to you, Mr. Murray? You are right in the district where the Steel Corp. is, I believe you have indicated?

Mr. MURRAY. Yes, sir.

Senator DONNELL. And the competitive conditions are such that I can well understand that you might well have to pay substantially or practically the same as the steel companies in order to get your workmen.

Well, now, isn't it true that the same practice has prevailed with respect to companies which are far removed from the actual location of the big steel plants, that that same condition has prevailed in those localities?

I will take an illustration, I will take a company in Des Moines, Iowa, or some Midwest section, actually far removed from the steel industry.

Isn't it true that there have been instances in which the unions have made it necessary for manufacturing establishments using some steel products, we will say, but far removed from the steel industry itself, to make exactly the same increase as the steel industry has had to make?

Mr. MURRAY. Yes, sir; they have.

Senator DONNELL. And do you regard that as a wholesome practice, to say that because the steel industry is doing that, that the steel products industry must accept a certain increase, say 18½ cents, as the case may be, and that, therefore, it follows that there should be the same increase up at Des Moines, Iowa, in a little company which has much greater competition and which, perhaps, has different competitive conditions and yet would be required to pay, under this type of collective bargaining, the same price that would be paid in the steel plants—you think that that is a wholesome practice, in your judgment? Do you regard that as a healthy economic condition?

Mr. MURRAY. It is not a healthy economic condition, and those companies should not be required to pay that.

Senator DONNELL. And yet that condition prevails throughout the United States today under the present plan of collective bargaining. Isn't that right?

Mr. MURRAY. That is right.

Senator DONNELL. In the steel industry.

Mr. MURRAY. That is right.

Senator DONNELL. In fact, there are instances where they get clear out, where there is very little steel used in a particular plant, and yet the same increase is required by the unions through collective bargain-

ing conducted back in some eastern office, the same increase as applies in the steel industry. That is correct, isn't it?

Mr. MURRAY. Yes, sir.

Senator DONNELL. And you do not regard that practice as wise or wholesome from the economic standpoint, do you?

Mr. MURRAY. No, Senator.

Senator SMITH. Do you have any questions, Senator Morse?

Senator MORSE. No questions.

Senator SMITH. Senator Ellender?

Senator ELLENDER. In your statement you said that you suffered a great loss in the year 1946.

Mr. MURRAY. Yes, Senator.

Senator ELLENDER. Now, was that on account of strikes, or was it due to the fact that you were reconverting from the war?

Mr. MURRAY. It is a combination of both, Senator. I believe if we had not had the strikes, that we could have come much closer to breaking even. If you have one-third of your production year taken away from you, it is rather difficult to make it up in the other two-thirds.

Senator SMITH. Any other questions? Thank you very much, Mr. Murray.

Mr. MURRAY. Thank you. I would like to introduce Mr. Graves, president of the Barcalo Manufacturing Co., Buffalo, N. Y., also a vice president of this committee.

Senator SMITH. Very well. Mr. Graves.

STATEMENT OF NELSON M. GRAVES, PRESIDENT, BARCALO MANUFACTURING CO., BUFFALO, N. Y.

Senator SMITH. I notice that your testimony begins at page 16 of this compilation. Is that correct?

Mr. GRAVES. That is correct, sir.

Senator SMITH. You may go ahead.

Mr. GRAVES. Thank you very much for the opportunity.

My name is Nelson M. Graves. I am president of the Barcalo Manufacturing Co. of Buffalo, N. Y. We manufacture a miscellaneous list of products which falls into three main divisions.

1. Drop-forged hand tools such as wrenches and pliers.
2. Metal furniture such as porch gliders or swings and chairs.
3. Bedding products such as mattresses, bed springs, folding cots, and pillows.

We employ approximately 650 persons, about 500 of whom are in the bargaining unit organized by the United Steelworkers CIO union in February 1943. The company has about 400 stockholders living in about eight States and Canada, although the majority live in Buffalo and vicinity. The company is controlled and managed by Buffalo people. As such it is one of the more important of such manufacturing businesses of the Niagara frontier.

The Barcalo Co. can be classified as a part of the tool industry and the bedding industry. We are members of trade associations representing those two groups. We do not produce steel. Our only relation to the steel industry lies in the fact that we use steel as one of the materials going into our finished products. We use many other

raw materials as well, including lumber, cotton and rayon tickings, plastic and plastic fabrics, cotton and cotton linters, sisal and kapok, which in the aggregate approximate our steel purchases in dollar volume. We are not a part of the steel industry any more than a user of telephones is a member of the communications industry. We are fairly typical of the companies comprising the Non-Basic Steel Coordinating Committee.

Our relations with the steelworkers' union and with the independent union which preceded it have been friendly and cordial. Grievances have been few in number. We subscribe to the right of our workers to organize for collective bargaining and believe in human dignity and the rights of the individual. We also maintain that management has rights deserving equal respect in collective bargaining and before the law. In our more than 50 years of continuous operations we have never had a lock-out and but one strike. That one took place last January.

Despite the fact that we are unrelated, the united steelworkers have continually classed us as belonging to the steel-producing industry. When basic steel companies receive a wage demand, we receive the same demand. When the basic steel companies were called out on strike January 21, 1946, our plant was struck. Instead of being afforded the opportunity to collectively bargain with representatives of our local union we were "kept on ice" so to speak until the basic steel companies came to an agreement with their unions.

I might digress there for just one second to say that during the process of having this so-called collective bargaining, we made an offer of a wage increase plus a workweek of 45 hours which, in the aggregate, would have brought the take-home pay of the workers above the war level. That was refused.

When the wage settlement with basic steel was made we were handed a wage demand for the same amount on a take-it-or-leave-it basis with no opportunity to negotiate the question.

We were told, in effect, that if we offered 24½ cents when they were asking for 25 cents, it could not be accepted.

Senator DONNELL. Yet your steel production aggregated only 50 percent?

Mr. GRAVES. That is right, of our total production.

Senator DONNELL. And yet you were treated as a part of the steel industry?

Mr. GRAVES. That is correct.

Senator DONNELL. Furthermore, the actual bargaining took place somewhere else and you had to take it. Is that correct?

Mr. GRAVES. That is correct, sir, with the admission of regret on the part of the local representatives of the union.

Senator MORSE. You are not a member of any employers' association. Has any right been given by you to any such association to bargain for you?

Mr. GRAVES. None whatever, Senator.

Senator MORSE. And that is quite a different situation from the case in which the employer is a member of an employers' association and where, as an association, he seeks to work out a contract with a union on a territorial or industry-wide basis.

Mr. GRAVES. That is no such relationship at all.

Senator MORSE. Thank you.

Mr. GRAVES. The strike lasted 7 weeks. It could only be settled by accepting the union ultimatum, although at the time we had no assurance that we would receive permission to advance prices to help offset the wage increase. The strike cost our company approximately \$12,500 per week, to say nothing of the cost to our workers and to the economy of the city of Buffalo.

Multiply our case by over 1,000 times and you will realize the effect of this unsound union campaign on the national economy for the same union has organized that many companies outside the steel industry and has thrown them into the same bag. The union's attempt to create a uniform wage machine out of as heterogeneous a group of manufacturers as can be imagined does not take into consideration the varying wage scales in the many industries and localities involved. It does not consider the harm resulting to competition in the small business economy; no thought is given to the financial soundness of the small company on which its members are dependent for jobs. Instead, the union, without correction by the Congress, unrealistically tries to force through a one-size increase for its members everywhere and it is so well organized on a national scale that the individual small company is helpless in trying to make its voice heard with any effect.

Senator SMITH. Would you say that your employees enthusiastically support the over-all union policy, or do they have to go along with it? How do you size up the attitude of your own employees in this matter?

Mr. GRAVES. Well, I can only judge by what I hear them saying, by certain confidential talks of many men whom I have known for many years in the company.

I should think that in the aggregate they are opposed to the union treatment. Possibly their opinion is based on their own experience, when they went on strike for 7 or 8 weeks, only to come back and find that they are getting less money than they were getting before and far less than if they had accepted our original proposition which, it is true, would have called for a longer workweek, but would have meant more take-home pay.

Senator SMITH. You think that they would prefer to bargain with your individual company?

Mr. GRAVES. I think that they would; yes, sir.

Senator SMITH. I am interested in that, in the actual individual himself, the workingman, whether he would prefer to bargain with the plant itself, and not be bound by the over-all union rules which would tell him what to do.

Mr. GRAVES. There is no question about that, sir. They come to us for help, they do not go to the union. There is no paternalism in the union, no social life or anything like that.

If they need help, they come to us. If the mortgage is foreclosed or if the baby is sick, they come to see us.

Senator SMITH. That is, you have their welfare and interest at heart; they are your own people?

Mr. GRAVES. Very definitely.

Senator SMITH. And they take advantage of that?

Mr. GRAVES. Very definitely.

Senator SMITH. Do you have an incentive plan in your plant so that a man feels that he is getting a share of what the plant produces?

Mr. GRAVES. We have two plans. There is one based on production; and one based on participation at the end of the year, where the profits come to him as a Christmas bonus.

Senator SMITH. Do you think the employees like that set-up?

Mr. GRAVES. I do, yes. I think it would mean a great deal to them if it was taken away, as I hope it will not have to be.

Senator THOMAS. With regard to your offer of higher pay for 45 hours a week, did the strike itself have anything to do with that offer?

Mr. GRAVES. No; none whatever. I made a statement during which that offer was reemphasized and I thought, as a matter of fact, that it was getting quite a reception. I was getting a big applause, but that was prior to the strike vote. The strike vote was 2 to 1 for a strike.

Senator THOMAS. Well, if it was prior to the strike, what caused you to make the offer?

Mr. GRAVES. Simply a desire to bargain at the local level under our own conditions.

We were also going into reconverting and we anticipated that we would employ many more people than we did during the war, so there was no question of cutting down jobs, but rather a question of employing more people, so we were offering them and we were willing to offer them longer work, more work, which would give them an increase, in order that the take-home pay, which is the real pay, would be larger. Under our offer their pay would have been larger than even during the war period.

In the settlement, when it was actually made, the men are getting the same or less.

Senator THOMAS. Then if someone would state to you that the threat of a general strike through the industry had been a stimulus, if that threat, a threat of that type had been there, it had nothing to do with your offer?

Mr. GRAVES. None whatever.

Senator MORSE. I would like to ask a question. In 1943, was it, or 1942, we had the Little Steel case?

Mr. GRAVES. 1941, Senator, I believe.

Senator MORSE. Well, now, prior to the Little Steel case, you bargained on a local basis with your worker or the local union in your own plant.

Mr. GRAVES. Well, our union was an independent. It was not affiliated with any of the national unions.

Senator MORSE. Now, then, the Little Steel decision itself, when it came down, did not directly apply to your company, did it?

Mr. GRAVES. Well, we were already above it, Senator, it did not apply above the 15 percent.

Senator MORSE. But, subsequent thereto, were you blanketed in by the War Labor Board, along with a list of the firms bound by the decision in the steel case of 1943?

Mr. GRAVES. We were not——

Senator MORSE. What I am trying to find out is this, how did you get blanketed in?

Mr. GRAVES. The first time, sir, was when the contract had run out in February 1943 and there was no negotiation pending for a new contract.

We received a wire, I think in January 1944, stating that our case had been referred to the big board in Washington and would be considered along with the case of Big Steel, as Mr. Evans referred to in his summary of the over-all situation.

That was the third time, historically, that we were thrown in with Big Steel. Prior to that our bargaining, I would say, was on a local level.

Senator MORSE. And that was done upon the explanation, as I recall, that in the interest of saving time, they would lump all of these cases together.

Mr. GRAVES. That is right.

Senator MORSE. And it brought the so-called fabricated products companies into a joint hearing before the board to determine whether or not the allowance that was given in the Big Steel case should not automatically be applied to all the fabricating companies that had a contract with the United Steelworkers of America; but, from that time on, the collective bargaining has been carried on by the big steel companies.

Mr. GRAVES. That is the practical result of it; yes, sir.

Senator SMITH. Any further questions? You may continue.

Mr. GRAVES. We have several score of competitors in the bedding industry and a small number in the furniture and tool industries. Few of them happen to be organized by the steelworkers union. Our livelihood and our very existence as one unit in highly competitive industries depends on collective bargaining being undertaken by the union with regard for area and competitive conditions.

We believe the Congress must take certain positive steps through legislation if the future of such small businesses as ours is to be assured. The burden on management is such that unless recent trends are reversed an increasing number of small businesses will pass out of existence, either through liquidation or merger.

1. Collective bargaining for both employees and employers at the plant level must be a reality.

2. Wage increases must be based on facts and the individual circumstances surrounding a given company.

3. Impractical theories calling for organizing unrelated business should be corrected so that realistic and economically sound wage patterns can evolve. The jurisdiction of organizing unions should be defined so that interstate commerce is not impaired by impractical organization.

If you agree that these three end results are desirable and in the public interest, I believe an approach to them may be accomplished by the enactment of legislation which will—

1. Guarantee to employers as well as employees the right to express their respective positions: In simple language the employer

should have the right under law to tell his employees his position on any matter so long as he does not intimidate, threaten or coerce.

I will admit that I am being a little bit selfish in making that recommendation, which is not unique, as you know.

I believe that in a company of our size, we can talk with our people and discuss with them in a friendly way and arrive at a solution that may not be practical in a larger organization; but I believe that this is a minimum requirement, be the company large or small.

Senator MORSE. Don't you think the decision in the Thompson case has restored free speech for the employer again?

Mr. GRAVES. Well, it is questionable. I will admit that Mr. Crawford, of the Thompson Co., has a unique ability as a public speaker and he is probably more fearless than some others might be.

It would, of course, establish a precedent, very definitely.

However, in such a statement as I referred to that I gave before my people, when I was, in fact, bargaining with them not to strike, the situation is not the same.

Furthermore, it does not go far enough. It is still the law, although a man might not run afoul of it in a carefully prepared statement, whereas, talking to the people, he could.

Senator SMITH. You want all restrictions removed from contacts between employer and employee so long as there is no intimidation?

Mr. GRAVES. So long as there is no intimidation. Just the right to talk man to man.

Senator SMITH. You do distinguish apparently between a large corporation which has not the same personal touch, and the family type, like yours, it seems to me.

Mr. GRAVES. That is probably a little selfish on my part as against a big corporation which might need more safeguards.

Senator SMITH. I am profoundly interested in the family type of corporation which takes care of its workers. Environment has a lot to do with production.

Mr. GRAVES. Everything to do with it, Senator.

Senator SMITH. The personal feeling and knowledge that the employer cares for him is going to help solve this problem.

Mr. GRAVES. They have been there, many of them, all their lives.

Senator SMITH. The smaller companies such as you are operating—are most of them in that classification?

Mr. GRAVES. Most of them, almost entirely.

Senator SMITH. I am glad to bring it out in the record. It is very important.

Senator THOMAS. Did you mean man to man? Did you not mean that you want the employer to have a right to talk from man to all the men?

Mr. GRAVES. Yes.

Senator SMITH. You did not mean man to man?

Mr. GRAVES. I was speaking somewhat colloquially. I meant to sit down and discuss it, much as we are discussing it here. Try to find the solution. And, I am sure we can find it.

2. Provision for the secret ballot: In the case of issues involving all the employees comprising the bargaining unit of a given company there should be freedom of expression by means of the secret

ballot under impartial supervision. A two-thirds vote should be required in all cases so as to indicate a clear majority opinion on such important issues as a strike, union security, and so forth.

Senator SMITH. Would you apply that to the closed-shop issue too?

Mr. GRAVES. Well, my feeling on that, sir, is that as far as our own shop is concerned, if I felt that our people had the right to vote in secret and privately and express their opinion, if they wanted the closed shop, I would not oppose it. As a matter of principle I am bitterly opposed to the closed shop, because I think it invalidates the rights of the individual which I am determined to fight.

Senator SMITH. If there was a two-thirds vote of the employees for the closed shop, would you say that principle would be any different for the minority left out?

Mr. GRAVES. I think it would be wrong, but I would be forced, if consistent, to abide by it.

Senator MORSE. I am interested in your testimony about the secret ballot. Governor Stassen testified the other day in support of the secret ballot on the taking of a strike vote. A majority vote was his proposition. But setting aside for the moment the percentage of the vote, I judge from your testimony that you think you might get quite a different result from a secret vote of the workers in a plant if they were voting on a specific proposal of an employer from the type of vote that you get under the Smith-Connally Act when they are just voting as to whether or not they shall strike if their representatives cannot negotiate a successful contract with the employer.

Mr. GRAVES. I think that is very definitely true, and the two sort of hitch together. I would take my chances, if I had the right to explain our side of the story face to face with them, to let it rest with their conscience and with their vote, if it was not coerced.

Senator MORSE. Then you think the proposal for a secret ballot is a proposal of substance and not of mere form?

Mr. GRAVES. Exactly.

Thank you very much. May I at this time introduce Mr. William J. Sampson, who is president of the American Welding & Manufacturing Co., of Warren.

Senator SMITH. We have two other witnesses today outside of this group, and I want to give them a fair chance to be heard, if they are here.

How many more witnesses are there in your group?

Mr. GRAVES. Mr. Foster, Mr. Klein, and Mr. Glasgow. We had hoped to have four, and I apologize for taking so much time.

Senator SMITH. I think we might hear the next witness and we will see how our time is going. We will try to close about 5 o'clock, and it is now quarter past 3.

STATEMENT OF WILLIAM J. SAMPSON, JR., PRESIDENT OF THE AMERICAN WELDING AND MANUFACTURING CO.

Mr. SAMPSON. My name is William J. Sampson, Jr. I am president of the American Welding & Manufacturing Co. of Warren, Ohio. We are manufacturers and fabricators of steel products and nonferrous welded products. At the present time there are approximately 325 people on our pay roll.

We have every expectation of gradual increases in both our annual production and our pay roll as raw materials become more readily available. Our products are used by the automotive, petroleum, railroad, agricultural implement, electrical, heating, and ventilating as well as other industries.

Warren, Ohio, a city of 62,000, is located in the highly industrial Mahoning Valley of northeastern Ohio.

Although both carbon and alloy steel is an important raw material with us, we also work with and weld aluminum, copper, and monel metal. Research is now being carried on which we expect will lead us into the welding of other nonferrous metals.

From this description of our company and its products you can readily understand that we are in no sense a part of the basic steel industry, but merely a customer of the basic steel industry. Despite this fact, the United Steel Workers of America, CIO, claim jurisdiction over our employees. We signed a contract with the steel workers in May 1937. In June of that same year our employees went out on strike in sympathy with, and to support, the workers on strike at the local Republic Steel Corp. plant. This you recall was the Little Steel strike of 1937. The result of this action on the part of our employees was that the company declared the contract void.

Our employees returned to work in July 1937, and worked without any union organization until September 1940. Then, after a month's idleness, a contract was signed in October with the United Steel Workers which has been continued year after year.

Although my association with the company only dates back a few months over 4 years, a study of its history discloses that prior to this organization strike, the company had had very little, if any, labor trouble.

Late in 1945 and early in 1946, American Welding, whose production had been exclusively war materials, was engaged in converting its products and its facilities to peacetime use. Our employees, as far as we knew, and there were numerous indications that it was so, were interested and sympathetic with our efforts to convert for they realized that we had a definite and serious problem confronting us.

Then came the January 1946 steel strike. This strike was ordered by the international headquarters of the United Steelworkers of America to enforce on American Welding, and other fabricators of steel, as well as some who used no steel, the demands which the union had made on the basic steel companies. Counter wage proposals were made to our local through its officers but there was no collective bargaining as the officers were apparently compelled to hold to the dictates of the international.

During the shut-down and while our people were out on strike as the result of instructions from international headquarters, we were approached by many of our employees who indicated their willingness to accept company counterproposals and offered to return to work. These employees were discouraged by the company because we felt that any resumption of activities on our part on such a basis would merely bring violence and retaliation on our employees. Furthermore, at that time, the business on our books was not sufficient to guarantee continuous operation of our plant. If a shut-down or lay-off became

necessary these loyal employees would be blacklisted by their omnipotent and far-reaching union and would be unable to support themselves and their families. We recommended that they maintain their status with the union and continue with it until the strike was settled.

The strike continued through the two cold months of January and February in 1946. The relations with our strikers were such, and on so friendly terms, that we opened our gate house to the pickets who were picketing our plant and provided them with hot coffee and doughnuts from our cafeteria as well as games and magazines, throughout the duration of the 60-day strike. In return, the union allowed us four members to carry on development work in our plant and also crews from their ranks to handle such incoming raw materials as reached our plant.

At the end of 2 months our strike was settled on the basis of a pay increase of 18½ cents per hour. This was the wage award given the basic steel industry by President Truman.

Our situation was further aggravated by the fact that though we were under rigid price control, so far as our product prices went, we were obliged to pay the steel price increase awarded by the Government to the steel industry and in addition the wage increase of 18½ cents per hour awarded by the President of the United States. In other words, we were penalized twice with no possibility of a product price increase to immediately offset the two cost increases imposed on us.

The Mahoning Valley is, as you gentlemen know, substantially a steel-producing and a steel-fabricating area—perhaps the greatest in this country. The steel strike, affecting as it did not only the steel producers but the steel fabricators, produced an economic paralysis in the entire community. Tens of thousands of men were on strike in the steel plants and other tens of thousands were idle because their plants were covered by the steel contract. Beyond the period of the strike the economy of this area was affected because the workers were forced by the duration of the strike to dip deeply into their savings, which many of them had set aside for the purchase of needed goods denied them by the war.

In our discussion with the union covering wage negotiations, we pointed out to the union that our ability to raise wages was governed to some extent by competition. We pointed out that many of our important competitors did not operate under the United Steelworkers of America basic steel contract, and consequently would not be forced to meet the wage-increase demands of that union. We also pointed out that our rates on the average were well above the rates in other industrial plants in our areas, including the local basic steel plants and that the increase would further exaggerate the situation. We repeatedly pointed out that we were in the midst of a conversion program; that our business had been reduced almost to the vanishing point, as the result of war-contract terminations; that it was necessary for us to secure other and new customers to replace the Government; and that we had to create and develop new products and to reequip our plant. We pointed out that the wage increases which we had granted since 1939 were far greater than the cost-of-living index as shown by the United States Department of Labor. This increase in wage rates

from January 1941 through September 1945 was 70.4 percent in average base hourly rates. In May 1946 after the 18½-cent general increase had been in effect 2 months, the average base hourly rate was 106.4 percent over the average hourly rate of January 1941.

These arguments were of no avail. We were told over and over again, that the orders of the international union had to be followed and that local conditions made no difference and had no effect.

Finally let me say, that I am enthusiastically in sympathy with, and wholeheartedly support the principles and objectives expressed and outlined by the nonbasic steel coordinating committee. I hope most sincerely that this honorable committee will recommend legislation of a sort that will remove one-thousand-one-hundred-odd nonbasic steel companies from under union-wide dictates and from under the shadow and jurisdiction of the basic steel formula. In no other way may we expect to progress and to add our contribution to the economy of this Nation.

Senator SMITH. With your knowledge of the conditions in these various companies that are in your group here, would you say that there are other conditions than just the wage rate that interest the workers and give them an incentive to get enthusiastic about their environment and their plant and so on?

Mr. SAMPSON. I would say so; yes, Senator.

Senator SMITH. My point is this: That just the settling of an overall wage does not answer all the questions of a man's being happy in his work, and I imagine in some of these smaller companies, like your own, which I classify perhaps correctly as a family company, you take special care and interest in them whereas larger companies might not do it. That is an incentive to stay in the smaller company rather than to go into a bigger company even at a higher wage. Is that a fair statement?

Mr. SAMPSON. Yes, sir.

Senator SMITH. I am interested in a plan that offers an incentive to workers to be part of the industry and to feel they share in its success and take chances along with it when it is not quite so prosperous. I think there is a lot to be said for that happier condition in American industry.

It seems to me that the group of plants that you represent are a very good illustration of what I am talking about.

Mr. SAMPSON. Senator, I think there is a very strong trend in that direction among the smaller industrials. And, they need not be the smallest.

Senator SMITH. Are there any other questions of the witness?

Senator MORSE. Mr. Sampson, what you are saying in your testimony in part, in effect, is this, is it not, that your plant and similar plants that have been testifying through their spokesmen here today are confronted with a situation in which there is no bargaining? It is not a question of right of labor to collective bargaining or your right to collective bargaining, but what you are saying to this committee is that as it works out with these fabricating plants you have no right to bargain at all?

Mr. SAMPSON. That is right, sir.

Senator MORSE. And you are not, as I understand you, taking the position that there should not be any industry-wide bargaining conducted by employer associations in behalf of the members of those associations. That is not your position?

Mr. SAMPSON. Senator, I do not believe I get that question.

Senator MORSE. Let me restate it. That is, your testimony, as you have given it thus far, is not testimony against industry-wide bargaining. What your testimony means to convey to this committee is that if you are going to have industry-wide bargaining, then the employer concerned with the bargaining at least ought to have a voice in the employer's association that carries on the bargaining?

Mr. SAMPSON. That is right in part, sir. I am implying in what I have said here, and I am stating in what I have said here, that we have had no opportunity to bargain. I do not mean to say that I am in favor of industry-wide bargaining.

Senator MORSE. I want to be absolutely fair to you. I certainly do not want to put words into your mouth. I will go at it from another angle. We have two problems here, as I see it. We have the problem presented by the fabricators of steel in which they say in their testimony here today that they are bound, in effect and in practice, by a collective-bargaining agreement that really is negotiated by the big steel companies of this country with the United Steelworkers of America. That is actually correct, is it not?

Mr. SAMPSON. Yes, sir.

Senator MORSE. You are saying, in effect, that you do not think that is right. I do not either, if that is the way it is working out. I do not either, because that is not bargaining.

But you are not saying that because that is the way you are being treated that that is any argument against industry-wide bargaining between an employers' association, the members of which prefer to bargain on an industry-wide basis with the union that represents their plants?

Mr. SAMPSON. Senator, we are not—that is, the nonbasic steel coordinating committee, representing a number of companies—an industry. We are not an industry. We are many industries.

Senator MORSE. I understand that. And, you are not a member of any employers' association either, are you?

Mr. SAMPSON. No, sir.

Senator MORSE. What you fellows are are independent contractors or employers, so to speak, that are having applied to you a master contract negotiated by the big steel companies of this country and in which negotiations you have no voice?

Mr. SAMPSON. That is right, sir.

Senator MORSE. Now, am I to understand from some of your remarks which you have made since I started to examine you that, independent of the plight in which you find yourself in the field of collective bargaining, you still would also find yourself in opposition to industry-wide bargaining on the part of an employers' association, the members of which prefer to bargain that way?

Mr. SAMPSON. That is correct, sir.

Senator MORSE. But your testimony here does not relate to that proposition at all. Your testimony relates only to the factual situation in which you find yourself that causes you to believe that you are

not being given your collective-bargaining rights under the existing practices of the big steel companies and the union?

Mr. SAMPSON. Yes, sir.

Senator THOMAS. May we go one step further? Then, the fix you are in, if we may call it that to start from, is a condition which makes you protest quite as much against the corporation that the steelworkers' union bargains with as against the union itself?

Mr. SAMPSON. Senator, I do not see that that has any relation to it, if I understand it.

Senator THOMAS. Do you not think that the fact that the United States Steel is a great corporation and exists in many parts of the country, and that it bargains as a unit with its labor, and that your situation, say, was a situation wherein your labor was very, very happy instead of threatening to strike at all, but you are not happy because you have to go along with Big Steel, but you find yourself compelled to go along, and labor does not want you to—under those circumstances are you not objecting quite as much to Nation-wide employer bargaining as to Nation-wide employee bargaining?

Mr. SAMPSON. Senator, I do not think Big Steel has any right to bargain for us. I think we should have the right to bargain ourselves with our employees.

Senator THOMAS. I think that is fine. Now, are you not the first witness who has pointed out to us that probably the industrial habit—that is, the employer habit—of Nation-wide bargaining is quite as responsible for the fix that you are in as employee Nation-wide bargaining is?

Mr. SAMPSON. I do not understand how I have.

Senator THOMAS. You still think it is all right for Nation-wide employers to bargain with their employees, but it is wrong for Nation-wide employees to bargain?

Mr. SAMPSON. No, sir.

Senator ELLENDER. I think Mr. Sampson better stand on his statement—that is, his written statement.

Mr. SAMPSON. Senator, I do not understand that either.

Senator ELLENDER. I believe you are a little bit confused.

Mr. SAMPSON. I think probably I am, sir.

Senator MORSE. We certainly do not want to confuse you.

Senator THOMAS. We do not want to confuse you. What I want to do, and what we all want to do, is show that this problem is pretty big. If the problem comes to us as legislators, we ought to be able to see all of the factors connected with it. As I listen to you, I get the impression that you are quite as much a victim of the Nation-wide bargaining of the United States Steel Co. and its associates as you are a victim of the Nation-wide bargaining of the United States Steelworkers' associates.

Mr. SAMPSON. I think we were.

Senator THOMAS. That is what I want you to say.

Mr. SAMPSON. I think we absolutely were, but I do not think we should be subjected to either.

Senator THOMAS. Good. Well, that is all right.

Senator MORSE. I agree.

Senator SMITH. Is your testimony finished?

Mr. SAMPSON. That is all. Thank you very much, gentlemen. May I have your permission to introduce another member?

Senator SMITH. I regret very much, but we have had an hour and a half of this group of witnesses, and we have allocated our time to the American Mining Congress for the next hour and a half, so I think, unless there is something special that has not been testified to, that we ought to go to the next group and accept the briefs of those who are here. I take it their statements are all here.

Mr. SAMPSON. They are all here.

Senator SMITH. In this over-all brief?

Mr. SAMPSON. Yes.

Senator SMITH. I regret to have to suggest that, but I think it is only fair to the other witnesses that are here, whom we called for today, to let the American Mining Congress appear and take the stand now.

If your people would like to wait, and if we get through as we expect to, I will keep the hearings open until 5 o'clock, which is our custom. But, possibly, you are satisfied to leave the briefs for your remaining witnesses.

(Mr. Sampson submitted the following statements:)

BRIEF SUBMITTED BY C. J. GLASGOW

Mr. Chairman and members of the committee, I am C. J. Glasgow, of the C. J. Glasgow Co., Detroit, Mich., a small Michigan corporation established 9 years ago to engage in the fabrication of steel for the construction industry. Our average number of employees is 55. The company's shops are within the city of Detroit.

Our operations consist of purchasing rolled steel shapes from the basic steel industry which are fabricated by cutting, punching, riveting, and welding in accordance with engineering design to form complete structural frames for buildings and structures. This should classify us as a part of the construction industry. Instead though, since our employees belong to the United Steelworkers of America, CIO, we are tied directly to basic steel as far as contract negotiations are concerned.

Until 1942 this company was open shop, as were most competitive shops in this area. Labor relations were harmonious and at no time had there been any dispute or any lost time due to labor stoppages. In June 1942 our shop was organized by United Steelworkers following an election held under the jurisdiction of the National Labor Relations Board. A contract was signed and labor conditions remained peaceful with no time lost until after the termination of the war.

In November 1945 we were presented with list of demands by the United Steelworkers and were asked to bargain with our own shop committee on these demands. This list had been made; I was told, by the executive committee in Pittsburgh. It asked for a 25-cent hourly increase for all employees, along with numerous other requests. In a meeting with our shop committee, I pointed out that no dispute existed between them and the company. We offered them a 12½-cent hourly increase beginning the following day. In addition, we offered them any increase gained by other united steelworkers locals in our territory effective the day of that settlement. This was turned down by our shop committee. I was told by them that they had no authority from Pittsburgh to accept any proposition except that which had been authorized in Pittsburgh. This showed that no true collective bargaining was possible. We were trying to bargain with our people in Detroit but the demands came from the union heads in Pittsburgh. The demands were inflexible. No deviations were permitted.

We had no opportunity of presenting our specific problems to them. The demands made of basic steel did not fit our conditions and therefore could not properly be met by us. Due to the local bargaining committee's inability to negotiate further, we continued operations under the old contract until January

21, 1946, at which time the United Steelworkers called a strike in all plants organized by this union.

Having no grievance with any of our employees, after 2 weeks we approached the union for the purpose of resuming work. The answer from the negotiating committee was that the only term possible was an immediate increase of 18½ cents per hour in accordance with President Truman's statement, together with the stipulation that this was an interim agreement, and that any increase agreed to by the United Steelworkers, and the United States Steel Corp. would be the only basis for a contract. No consideration was permitted concerning local conditions or the welfare of our employees or the interests of our company.

At present our current contract has expired, but we have not been afforded an opportunity to negotiate a new one, due to postponement of basic steel negotiations.

Gentlemen this definitely is not "collective bargaining." A few men in Pittsburgh who know nothing of our problems, call the shots and we are told to conform, or else.

We sincerely believe that the United Steelworkers have arbitrarily denied us the right of collective bargaining, and that a continuation of this attitude is extremely dangerous, not only for our company, but for our community and the Nation at large. We respectfully ask the committee to prepare legislation to be passed by Congress with the positive intent to return to us the right to true collective bargaining with our own employees upon subjects which concern only our company and our own industry. The local union must be allowed to bargain collectively and reach an agreement without interference from the international union.

It is our honest belief that the objective of the Nonbasic Steel Coordinating Committee represents the best method of attaining industrial peace. We again ask your committee to report such legislation in line with these fair principles.

BRIEF SUBMITTED BY TOWNSEND FOSTER

Mr. Chairman and members of the committee, my name is Townsend Foster. I am vice president and general manager of the Foster Bros. Manufacturing Co., of Utica, N. Y. We are, and since 1871, have been in the bedding industry and manufacture mattresses, studio couches, bedsprings, etc. We employ about 340 factory workers. Utica, N. Y., is a community of about 110,000 population.

We are in the bedding industry, not the steel industry. Steel is only one of many raw materials we use in making our bedding products, just as we use textiles for that purpose. In fact, more of our sales dollars go for textiles than for steel in any form. We manufacture bedding products—mattresses, couches, and the like. We are part of the bedding industry, and we compete with others in the bedding industry, not with steel plants. Nevertheless, our employees were organized by the United Steelworkers of America, CIO, in 1937, and are still affiliated with that organization.

For 66 years prior to organizing by the union, we had one work stoppage, and that for about 3 days just prior to 1920. Since the union came in, we have had numerous short stoppages. In 1940, we had a 30-day strike, with the closed shop the principal issue. The strike was settled without the closed shop. As a result of that strike, our employees lost considerable money in wages, the community lost considerable buying power, and the company lost production for the period.

In January 1946, our employees were called out on what was in effect a sympathy strike with the employees of basic steel. There was no possibility of true bargaining in this situation as, following settlement of the basic steel strike, we received only an edict of "18½ cents per hour increase or else." We could not see our way clear to meet the 18½-cent demand, but did offer very substantial rate increases which were flatly rejected by the international union representatives. We were told that they would not accept and had no authority to accept anything less than the 18½-cent settlement by basic steel. This strike lasted approximately 6 months, during which time the company invited the assistance of both Federal and State mediators. Even the mayor of Utica tried to mediate the matter. In all mediation conferences, the union maintained their "18½ cents or else" position. The company even proposed arbitration of the matter, but the union refused. At this point, I would like to present document marked "Exhibit A," which is a reprint of a statement placed in the

Utica papers May 6, 1946, which explained our position to our customers and to the general public.

Had the company taken the adamant position taken by the union, we could have been subjected to a charge of refusing to bargain. The present laws protect the union from being subjected to a similar charge. Please bear in mind that we, who are in the bedding industry, were expected to settle on the same basis as basic steel, even though we were not a part of that industry; even though we had no representation or chance to be heard on the settlement arrived at in basic steel; and though, as a part of the bedding industry, we were without benefit of a price increase as was given to basic steel. In other words, basic steel, an entirely different industry than ours, did a job of absentee bargaining not only binding us but approximately 1,100 other nonbasic companies. This is not industry-wide bargaining—it is union-wide bargaining. Wage levels in our plant have been generous through our entire existence and in line with our industry and our locality.

The strike of 1946 cost our employees over \$300,000 in wages, and the community lost this purchasing power. The company lost the badly needed production, much of which was for use by the Army and Navy and for hospitals. This idleness had a very telling effect on the community and caused considerable suffering as well as loss of taxes to the State and Federal Governments, and put a heavy, unwarranted load on the unemployment insurance rolls.

The bedding industry is made up of over 1,000 companies, less than 2 percent of which are organized by the USWA-CIO. The balance either have other unions or no union at all and, consequently, were not subject to the bargaining conditions laid down by the USWA-CIO in this instance. Of over 100 bedding companies in New York State, I know of only one other organized by this union. Our industry is highly competitive, and we must be in a position to keep our costs at a point where we can compete for business in the open market and at least on an equal price basis. Our company, as well as others, have individual problems that have a very serious bearing on operations and costs. The USWA-CIO was unwilling to even discuss the factors which apply to our own industry, our local conditions, or our individual problems, and certainly no business can blindly disregard these factors when bargaining on a matter so vital to cost as are wages. The union in no real sense was willing to bargain on this issue. Their ultimatum was the "18½ cents or else."

Your committee is very properly addressing itself to the problem of industry-wide bargaining. You must also give attention to union bargaining which cuts across industry lines for this is the real problem facing miscellaneous companies in our group.

I very strongly support the principles and objectives of the Nonbasic Steel Coordinating Committee as presented to your committee earlier this afternoon. I urge your committee to report and vigorously support legislation which will preserve and strengthen the right of equal opportunity to all individuals in collective bargaining—legislation which will impose the obligation of equal responsibility thereby advancing the American ideal of fairness to all and favor to none. Labor monopolies are just as repugnant as industrial monopolies.

I thank you.

[Reprint from Utica papers of May 6, 1946]

EXHIBIT A

WHY NO BEDS?

AN EXPLANATION TO OUR CUSTOMERS AND THE GENERAL PUBLIC

We feel that those who have been patiently awaiting delivery of Foster products are entitled to answers to the following questions so frequently asked:

Q. Why isn't Foster delivering beds?

A. Because our employees have been out on strike since January 21, 1946, which has suspended all production, even on Government contracts. The strike was called by Local 1836, United Steelworkers of America, CIO, at the

time that the national union called the basic steel strike and for the same wage demands.

Q. What's the main issue?

A. The union demands an 18½-cent per hour increase, and not a fraction of a cent less; the same increase granted by the basic steel industry.

Q. If basic steel granted 18½ cents per hour increase, why shouldn't the same apply to Foster?

A. Because Foster is not a part of basic steel or of the steel industry. Foster is a part of the bedding industry. Foster is not a competitor of manufacturers of steel or steel products as such. If Foster is to survive, it must be on a competitive basis with others in its own bedding industry.

Moreover, the steel settlement was not intended to govern such cases as Foster's, the White House issuing the following release on March 4:

"The President said his recommendation of an 18½-cent an hour wage increase applied only to the basic steel industry. The President stated he assumed other settlements would be made through negotiations."

Q. Has Foster tried to negotiate a settlement with the union?

A. Yes; we have conferred many times, made many suggestions and offers, including arbitration, all of which the union has rejected.

Q. Foster being a part of the bedding industry, what is the wage increase situation in the bedding industry?

A. The bedding industry, as a whole, is not confronted with this 18½-cent demand of the CIO since less than 2 percent of the plants in the bedding industry are organized by the CIO Steelworkers' Union. There have, of course, been demands for increases and many settlements have been made. To date, it appears that the average wage increase "pattern" for the bedding industry, when ultimately ascertained by NWSB and OPA, will be between 12 cents and 14 cents per hour over VJ-day.

Q. What has OPA to do with it?

A. The prices of our products are regulated by OPA on an industry-wide basis, and the OPA will only adjust the prices industry-wide. The OPA will not adjust our price on an individual company basis. The industry-wide price adjustment to cover post VJ-day wage increases will be made by OPA on the basis of its analysis and determination of the average wage increase for the bedding industry. This study will not be completed for several weeks, and the issuance of the resulting price adjustments will require still more time. Thus, no price relief to cover wage increases is in sight for many weeks to come.

Q. Is Foster willing to go along with the indicated wage increase pattern for the bedding industry?

A. Yes. Even though it now looks as if the average wage increase in the bedding industry would be under 14 cents per hour, Foster has offered to increase the wages of all of its employees by 14 cents per hour, with a commensurate increase in piecework and incentive rates. This offer was rejected by the union.

Q. Can the company increase wages by 14 cents per hour and still operate at a profit?

A. No. The company will operate at a loss until such time as the OPA issues industry-wide price increases to cover the average industry-wide wage advance.

Q. When will the strike end?

A. We do not know.

FOSTER BROS. MFG. CO.

T. Foster, Vice President

811 BROAD STREET, UTICA, N. Y.

BRIEF SUBMITTED BY FREDERICK H. KLEIN

Mr. Chairman and members of the committee, my name is Frederick H. Klein. I am president of Orr & Semhower, Inc. The main office and plant are in Reading, Pa.

We manufacture automatic steam generating units for processing industries. We employed an average of 350 people during 1946.

Reading, Pa., where our main office and plant are located, is the county seat of Berks County. The population of Reading proper is approximately 110,000; the country 230,000. The life of the community depends upon miscellaneous and varied industry located in and around the city and upon a large agricultural and dairy production.

Orr & Sembower, in its production of steam generating units, uses steel plate and shapes, gray iron and steel castings, brass valves, electrical controls, and a great many products of other manufacturers. We belong, industry-wise, to a division of the steam generating and high pressure boiler industry.

Our operations do not belong in basic steel and have no relationship to the operations of basic steel.

Since the organization of our company in 1885, we had been singularly free from labor disputes. Early in 1944 the United Steelworkers of America, CIO, started reorganizing our productive and maintenance employees. After an election in late May or early June 1944, supervised by representatives of the National Labor Relations Board, the union was certified as bargaining agent for our production and maintenance employees.

Our first contract was signed June 28, 1944, to terminate October 5, 1946. On March 7, 1946, we entered into an interim agreement to extend the termination to February 15, 1947.

On January 21, 1946, our production and maintenance employees did not report for work, and pickets appeared at all entrances.

We had no opportunity to bargain with our people. We had received a flat demand from the representative of the international union for an increase of \$2 per day. We were told that we would settle for this or be struck.

During the period of our strike, it wasn't possible to enter into any agreement which was not based upon the future or past settlement made by basic steel and the United Steelworkers of America. We consequently settled on March 7, 1946, and granted a general wage increase of 18½ cents.

Our company finds that it cannot deal or bargain collectively with its own employees. The demands of the international union are the only demands made by the local. The local cannot accept any agreement unless it is first approved by the headquarters of the international union in Pittsburgh.

We have no dispute, actually, with our employees now, but we have received a letter from the Department of Labor, Office of the Secretary, Washington, D. C., dated January 16, 1947, reference Docket S-11800, signed by a Bernard Greenberg, which says in part:

"You are advised that notice of a labor dispute which threatens to result in a stoppage of production involving your establishment has been filed by the United Steelworkers of America pursuant to section 8 of the War Labor Disputes Act.

"The 30-day waiting period provided for in section 8, A (2) of the act began on January 14, 1947, following receipt of the notice by the Secretary of Labor, the National Labor Relations Board and the National Wage Stabilization Board."

Shortly following receipt of this letter, the international representative of the union called at our mill and demanded that we sign an extension agreement which would make any future contract terms or provisions agreed to by us with our employees retroactive to February 15, 1947. We have been told that if we did not do this, our plant would be struck February 15, 1947.

Gentlemen, is this what Congress meant by collective bargaining when it passed the Wagner Act? I can't believe it.

Here we have no dispute with our employees on wages, hours or conditions of employment. We have been asked to sign an agreement binding us to make retroactive the terms of some future agreement. What those future terms will be is unknown to us.

Can business operate successfully by blindly agreeing to assume unknown costs? If we don't do this, we are told our plant will be shut down.

That is the choice given us by the union. It is not what I would call collective bargaining in any sense. In the interim we are unable to make long term plans or commitments.

In our community, the United Steelworkers of America, CIO, having existing contracts with 23 manufacturing concerns whose individual products are: Bicycles and roller skates, gray iron castings, steel castings, machine shop products, hardware, beryllium, brass castings, railroad car wheel castings, tables, cutlery, automobile truck bodies, knitting machines, copper tubes, metal stampings.

With few exceptions they have all received the same strike notice that our company has received. As a practical matter, it ties them, for negotiating purposes, to an industry with which they have no connection, interest, or competition—basic steel.

The results to our company have been as follows:

(a) The jeopardizing of our market position, due to increased costs which will cause our selling price to rise, with consequent loss of sales.

(b) Complete inability to bargain collectively with our employees to our best mutual advantage.

(c) No responsibility of the union for its acts, causing damages to the position of the company with which it has a contract.

Our company subscribes to the principles and objectives of the nonbasic steel coordinating committee of miscellaneous businesses. We respectfully urge your committee to report legislation which will preserve the free enterprise opportunities for our company and other small companies like ourselves.

Such legislation should clarify what constitutes collective bargaining.

Both parties should have equal responsibilities in collective bargaining. Strikes and lock-outs should not be substituted for bargaining. A company should have the right to bargain in the light of its competitive and local problems.

I deeply appreciate your courtesy in giving me this opportunity to present the facts of our company's case and to point out the dangers facing small business under present conditions.

Senator SMITH. Mr. Kuzell.

STATEMENT OF CHARLES R. KUZELL, REPRESENTING AMERICAN MINING CONGRESS

MR. KUZELL. My name is Charles R. Kuzell. My residence is Douglas, Ariz. I am assistant general manager of Phelps-Dodge Corp. for its Arizona operations, which are predominantly mining, milling, and smelting of copper. I am predominantly an operating man. I have had extensive experience, however, in labor relations.

Professionally, I am a mining and metallurgical engineer by academic training and experience, having been a member of the professional Institute of Mining and Metallurgical Engineers for 34 years. At the present time I am chairman of the Arizona section of that organization and am currently a member of the national committee of that organization on problems related to collective bargaining.

As to operating experience, I have had 36 years in mining, milling, and smelting of nonferrous metals, particularly copper, but also to some extent lead and zinc, and in the associated activities such as coal mining, production and generation of power, and many shop activities including the metalworking, woodworking, and electrical arts. I have served in operating capacities as a workman, foreman, superintendent, and manager.

In the field of labor relations, I did not have the opportunity to acquire any academic training in the college lecture room. Mine came in the school of hard knocks. All that I have learned in that field has been in the crucible of my own experience and in studying the experience of others, particularly since the advent of the National Labor Relations Act.

I have been a member of a labor union on two separate occasions covering a period of about 2 years. I have directed working forces where no labor organization existed, where an employee representation plan was in effect, and also where there were labor organizations of several different types, under both the National Labor Relations Act and the Railway Labor Act.

I have been in charge of bargaining relations with organized labor unions including 57 locals. Of these, 4 locals are affiliated with the CIO, 6 are AFL Federal unions, and 37 are locals of 15 AFL internationals. Four are locals of the Brotherhood of Railroad Trainmen and four are locals of the Brotherhood of Locomotive Firemen and Enginemen. The AFL internationals are the usual shop craft organizations, but also include the Amalgamated Meat Cutters and Butcher Workers and the Hotel and Restaurant Employees and Bartenders.

I have participated in cases or hearings at the national and regional levels before the National Labor Relations Board, the War Labor Board, the Nonferrous Metals Commission, the War Manpower Commission, and the Railway Mediation Board, to which the above-mentioned unions were variously parties. I have directed the employer representation in a number of arbitrations for final determination of disputes arising from grievances.

I am appearing here in response to a request by the American Mining Congress. I am at the present time governor of the Arizona chapter of that organization. In September 1946, I was chairman of a subcommittee which drew up a statement, expressing the views of the mining industry on labor legislation, which was formally adopted by the convention of the western division of the American Mining Congress, meeting at Denver with an attendance of over 2,000 representative mining men. That statement was subsequently approved by the board of directors of the American Mining Congress, and a copy is appended hereto as exhibit A. Its contents may be fairly summarized as follows:

We believe in true collective bargaining. We believe also that as a result of the present-day labor laws and policies of the Government, collective bargaining is frequently bypassed by irresponsible labor leadership in favor of strikes, even against the Government. The time has come when it is necessary in the interest of the country and even of the unions that Congress promptly enact legislation to restore true collective bargaining.

Such legislation should affirm as lawful the strike by lawful means for legitimate ends. Such a strike is sometimes necessary as an economic weapon. However, the strike against the Government, the strike against other employers not involved in the dispute, and the strike by a combination of unions to tie up an entire industry are weapons which are too dangerous for the continuation of free enterprise and the safety of the Nation.

To remedy the present situation the following action should be taken:

1. Prescribe procedures for true collective bargaining.
2. Prohibit industry-wide bargaining and industry-wide strikes.

3. Make unions subject to the antitrust laws.
4. Make unions suable as legal entities in the courts.
5. Outlaw mass picketing, violence, and intimidation.
6. Recognize and prevent unfair labor practices by unions.
7. Provide equal employer and employee freedom of speech on matters of unionization, bargaining negotiations, strikes, and anything else.
8. Provide that NLRB findings of facts be based on a preponderance of relevant evidence.
9. Protect the rights of employees as individuals to work regardless of membership in a union.
10. Prohibit employer-union negotiated welfare funds or any other payment by employers of money to unions, except through authorized pay-roll deductions.
11. Declare that foremen, as well as other supervisory professional and administrative employees, are not covered by the National Labor Relations Act.

12. Exclude as improper subjects of collective-bargaining proposals encroaching on the employer's right to manage the business.

I would like to amplify some of these points and to give brief arguments substantiating the need for the legislative remedies that we propose.

First, however, I would like to speak briefly on the prompt enactment of labor legislation. We strongly urge that legislation be enacted as speedily as possible to provide remedies for the many evils which have become obvious under existing labor laws. It has been pointed out, I believe by Secretary Schwellenbach in appearing before this committee, that the waning weeks of 1946 and the early weeks of 1947 have been relatively free from work stoppages and serious labor trouble. This, however, in no way alters the basic condition of economic power possessed by unions and union leaders to disrupt our economy. It is imperative that no time be lost in providing legislative remedies to correct the many obvious evils.

There certainly is no need of setting up a commission to study the causes of labor disputes and the operation of existing laws. The National Labor Relations Act has been in effect for 11½ years and has built up a tremendous record of employer unfair labor practices and the remedy therefor.

Senator THOMAS. That statement, then, means that you are opposed to the President's recommendation for that very thing, does it?

Mr. KUZELL. I am referring particularly to Senate Joint Resolution 22.

Senator THOMAS. Which is in keeping with the Presidential recommendation, as you remember.

Mr. KUZELL. The way I understand.

Senator THOMAS. Did the American Mining Congress pass on that particular point?

Mr. KUZELL. Yes. However, there was no Senate resolution at that time. This meeting was in September, but they unanimously endorsed a proposition that there should be prompt legislation without any further investigation.

Senator SMITH. Would you say there might be a distinction between prompt legislation to meet some of the admittedly obvious evils and perhaps a long-range study on some of the larger questions that have come before us? Or do you think they are all in the same boat, so to speak?

Mr. KUZELL. There are so many obvious things to correct that prompt legislation would be very useful. To be sure, if Congress does set up a commission to make a study of further details, I suppose that any new situations disclosed could be corrected later. But there is no reason why in our opinion the basic obvious evils should not be corrected at once.

Senator SMITH. You may continue.

Mr. KUZELL. I mentioned the tremendous volume on the operation of the law with respect to employer practices, but, on the other hand, there is also a tremendous volume of testimony, since 1939, on all phases of the problem.

Procedure for true collective bargaining: There is no need to argue as to this. Secretary Schwollenbach, in his appearance before this committee on January 28, pointed out clearly how free collective bargaining has been bypassed during the war, and the need for a return to that process. Postwar events, throughout the year 1946, showed that collective bargaining was still being bypassed on a large scale, and indicated clearly the need for a statutory requirement that employers and employees, through their respective representatives, shall follow a code of bargaining procedure, including conciliation, before a dispute can be declared and before a strike vote may be taken. This would avoid many work stoppages which would otherwise occur.

In considering such a code, certain features of the Railway Labor Act may be helpful. That act has for many years prescribed a procedure and a timetable for collective bargaining and conciliation—called mediation in that act—before a dispute is declared and a strike vote permissible.

We concur in the almost universal recognition of the difference between disputes arising from grievances which have their source in the interpretation or application of existing agreements, and disputes emanating from failure of the bargaining parties to agree upon the proposals as to the provisions of a new contract or upon amendments to an existing contract. Adequate grievance procedures with a contractual obligation to go to arbitration as the final step do now in more and more cases take care of the first class of disputes without any work stoppage or threat of a work stoppage. For the latter class of disputes, however, a statutory requirement that the parties pursue a prescribed code of bargaining and conciliation procedure would in my judgment do much to restore true collective bargaining.

The following steps with a suitable timetable are suggested:

1. Notice of proposals setting forth their terms and listing the reasons therefor be served upon the other party within a short period of time just prior to the anniversary date of the contract.

2. Such proposals become the subject of prompt negotiations in good faith between the parties.

3. If direct negotiations fail, either party may request the services of a United States Commissioner of Conciliation; and both parties shall in good faith participate in the proceedings.

4. If the issue is not resolved within a specified period following the request for conciliation, then a dispute may, for the first time, be declared by the conciliator; the union may strike if it has the approval of the majority of the employees affected, or the company may lock out, or the parties may mutually agree to submit the dispute to arbitration for final determination. The code should provide arbitration rules to be used where voluntary arbitration has been agreed to by the parties. Nothing in the code should be construed as compelling or constraining either party to arbitrate.

5. Approval of a strike by the employees, as called for in step 4 and without which it shall not be a lawful strike, requires the affirmative vote of a majority of those to be affected, in an election to be jointly conducted and paid for by the employer and the union subject to rules to be prescribed by the code; no such strike vote shall be taken in any case until after the formal declaration of a dispute by the conciliator.

Senator SMITH. Would you call that strike vote the last step in the proceeding? I am referring now to Governor Stassen's testimony the other day where he felt something of this nature ought to be the last stage in the proceeding where the employee had the issue put up—on the one side the last offer of the management, and, on the other, the choice between that and strike.

Is that what you have in mind with this step 5?

Mr. KUZELL. That is, Senator. There is a point which I have read which I would like to reemphasize—that this procedure calls for the declaration of a dispute for the purpose of any law at the time when the commissioner of conciliation has fully explored the position of both parties, and by his effort has removed some issues, and perhaps there are a few left which he will crystallize in a definite statement and then certify as a dispute.

But until that time there would be no labor dispute as such, for any legal purpose. In other words, the fact that an anniversary date of a contract is approaching is no reason why one should say, "I have a labor dispute." So, also, if only proposals have been exchanged, there is no justification for saying, "Here is a labor dispute." Or, even though direct negotiations are in process or have been concluded, there is yet no justification for asserting there is a labor dispute.

It very frequently happens that when a commissioner of conciliation comes in and sits at the head of the table, between the opposing parties, that he is able to, by his own caucus with each individual, bring out the true reasons and purposes to be proved by the various conflicting proposals and, in explaining them, one to the other, it very often results in resolution of those outstanding matters.

Furthermore, he has at his disposal an up-to-date set of bargaining information and alternatives to meet various situations with which one or both parties may be somewhat unfamiliar. And, by dragging those out of the bag and putting them on the table, that frequently results in a resolution of difficulties.

So, until the commissioner of conciliation, sitting at the head of that table, says, "Gentlemen, I am convinced that you have had bona fide negotiations; I have faithfully pursued my job and done all I can to get you together on these remaining items—1, 2, 3; now, therefore, I will certify to the Director that there is a labor dispute on item 1," and specify it in detail, "item 2 and item 3, and I will make that certification," that will be the zero point for the handling of labor disputes according to this procedure.

Senator SMITH. And no strike vote before that?

Mr. KUZELL. No strike vote before that.

Senator SMITH. That determines the issue on which the strike vote will be taken?

Mr. KUZELL. Yes, sir.

Senator SMITH. Suppose before that happens there is a strike. You would call that an illegal strike. And what would you do in that case if the men walked out of your plant, for example?

Mr. KUZELL. Of course, in discussing this program, item by item, Senator, I would like to have it understood that many of these sections are inseparable from others. We must have enforcement for many of these recommendations that we are making, and, of course, merely having a program of this kind written into the contract without any provision in the law to enforce the contracts and compel unions to observe their obligations, would make it merely a scrap of paper.

Senator SMITH. Are you going to develop that later in your paper? Are you going to develop the enforcement measures later in your paper?

Mr. KUZELL. Not in detail. Only that there should be necessary enforcement.

I would like to answer a little more at length the question about the strike at that particular point, and, in doing so, particularly to emphasize this fact: The labor relations law has, in addition to protecting the organizational rights of individuals and setting up procedures for certifying of a bargaining agent, done it in such a manner that they have taken the democratic rights away from part of the working force. When I sit across the bargaining table with representatives from any one or a group of these 57 unions, I am not sitting across the table like I am here sitting across the table from you gentlemen. You gentlemen are organized and bargaining with me, so to speak, on a proportional representation basis—proportional to the majority and minority parties. But when I am sitting across the bargaining table from a union, I am talking only with the majority party, and I am prohibited by that law from talking to the minority. It is absolutely an undemocratic process.

Senator SMITH. Let me just interrupt there. You would suggest then, by that statement, that probably the bargaining group for the union should represent both the majority and the minority in dealing with the employer?

Mr. KUZELL. I have not gone so far because I have not been able to find myself bold enough to suggest a thing like that this year. But, if the Congress would have in mind and would actually toss the whole Labor Relations Act out of the window and put a democratic process in its stead, that is certainly okay with me.

But, in connection with the strike vote, in lieu of tossing the whole thing out the window, if you provide the strike vote to be taken among all the employees to be affected at this particular stage, when both parties have put their cards on the table, then the minority gets a chance to exercise their democratic rights and vote as to whether or not there will be a work stoppage which affects them.

Senator THOMAS. Is that not one of the biggest questions that came up when the National Labor Relations Act was considered—how to get representation from a minority group?

Mr. KUZELL. I am not familiar with the debate on that.

Senator THOMAS. It was. We argued it out for days. There were those who wanted some way or other to work out the technique so that you could get, to use your expression, sort of a proportional representation in a dispute; that the minority, if there was a minority, should be represented at the bargaining table. But it was a task that was too difficult to write into the law. We have not been able to solve that in America yet.

We have proportional representation in New York City, for example, and some other places. We tried it in Illinois. But, generally speaking, we do not have it, do we?

Mr. KUZELL. Well, the practical result, Senator, at the level of the front-line trenches where I operate, is that my voice is stilled. I cannot talk to the minority. It is an unfair labor practice.

Senator THOMAS. That is true.

Mr. KUZELL. So they have no representation whatever in what goes on. Therefore, I say that giving them a chance to participate in the strike at that particular time, after the cards have been played, would restore to large measure their democratic rights. I would like to point out, Senator, that such a strike vote would not be futile like those which were taken under the Smith-Connally Act. As William H. Davis pointed out as Chairman of the War Labor Board, such a vote was a vote for a "cushioned" strike, and the men reasoned that they were taking no risk because the Government would not let the plant shut down.

Furthermore, under my plan the strike vote is not taken during or prior to bargaining negotiations. It is when the employee is told, "Oh, we will not have any strike; we are just going to use this as a lever in bargaining." That would be out in accordance with this suggestion.

Senator THOMAS. Your theory also had its expression in a different way when the Smith-Connally Act was passed. The theory was there that the men would not follow what was assumed to be improper leadership into a strike; that if a vote were taken that there would not be a strike. Now that was pretty well exploded, was it not?

Mr. KUZELL. Well, that may have been. I have no doubt of it. But, results have shown that it was just going against human nature.

Senator MORSE. Is not one of the bad features of the Railway Labor Act the fact that a strike vote is really taken before there is an emergency board hearing? Even before you have an emergency board hearing, you have to have a very costly strike vote which runs into thousands of dollars in the railway industry. And, does not the record show that they all will vote to strike?

Mr. KUZELL. Well, I am sure, no doubt, you are right, Senator Morse. But, the strike vote prior to the appointment of the emergency board under the Railway Labor Act would be at the same point in the time table as we are proposing here anyhow, because we are not proposing any emergency or fact-finding boards. It follows mediation effort, the close of mediation and the certification of a dispute, and follows the rejection of one or both parties of the proffer of voluntary arbitration.

Senator MORSE. Except, do you not think that this is what is happening in the railroad industry, that because the emergency board is held in the background here as the last resort possibility, that first the strike vote is ensured, second, mediation in most of their cases is greatly hampered by the availability of an emergency board?

Put it this way. It has been my observation that under the Railway Labor Act mediation has broken down rather sadly in any case of any importance because they will take all they can get under mediation and then say, "Well, but we still want an emergency board."

If you plot the increase in the number of emergency-board appointments since the act has been in operation over the years, I think you will be surprised to see how in these latter years there is just a cluster of them. In the early stages of the act they were rarely appointed. But it has become so in the last few years that almost every railroad case of any importance at all ends up in an emergency board.

It is an invitation to have an emergency board appointed. Now, there may be a good many reasons for it. It is not open for dispute here whether we ought to do something about the mediation board under the Railway Labor Act. I do not know. But, the point is we have to watch out when drafting labor legislation that we do not lay out some very nice-looking procedure and overlook the fact that it is the procedure in the last step that is usually going to be controlling. They are going to look to see what the chances are along the line. They will say, "We will check this procedure off, and this one off, because we have always got a chance here with that final procedure—the emergency board."

As you well know, from your experience during the war, that is the way we were used on the War Labor Board constantly. We had thousands, and I mean thousands, of cases in which there was no attempt to settle the dispute between the parties. Why? Well, because you could always go up to the War Labor Board and take your chances there.

So, I look somewhat askance at a procedure that encourages them to hold off and hold off with the thought that "maybe we will get something from that last resort."

Mr. KUZELL. Ordinarily, the employer is accused of stalling or wishing to stall. Sometimes I have been in that position myself, but I have not suggested here a mediation step as such or any separate mediation board. I am looking at mediation as being more or less equivalent to conciliation. And, insofar as the emergency board is required, I am really speaking more particularly for the western division of the American Mining Congress which has to do with the mining of ferrous and nonferrous metals and the processing of the ores. I think that the coal association will appear before you on their

own behalf. So, I cannot give their views on the point of fact-finding or emergency boards.

But, for the metals part of the industry, I think I can definitely state that the industry is not interested in any fact-finding or emergency boards. The industry is not one which very easily falls into the category of affecting public health and safety.

So, I do not come here prepared to discuss that particular phase of the settlement of a dispute, namely, fact-finding, but merely to say that we are not for it insofar as the ferrous and nonferrous metals are concerned.

Senator MORSE. The only reason I raised the point was from the language on page 5 of your statement. I did not know whether you include in that paragraph the possible emergency board set-up or not. If you do, I think it might be helpful, but I think we shall have to so phrase it, if we are to have it in the act, that it will be different from what it is in the Railway Labor Act.

Mr. KUZELL. Well, we are not interested in it as far as the metal mining division of the mining congress is concerned, and also we are not interested in using a set-up for industrial disputes similar to the Railway Adjustment Board. It has been demonstrated that that is unwieldy, that they have thousands of cases ahead of them all the time, and that it has not been particularly satisfactory; whereas, as I have already pointed out, in the industry we have more and more contracts with a contractual obligation to settle the grievances by arbitration of our own. We find that quite satisfactory, and there are no disputes that I know of that have, for a long time, occurred as a result of grievances. That is already well taken care of.

Senator MORSE. I am thinking of that same point in connection with the use that you propose to make of the United States Conciliation Service. If, as a matter of legislative obligation, it were necessary to call in a United States conciliator in the thousands of cases each year in this country involving negotiation between employers and unions, a tremendous service would be required, would it not, a service many times beyond what the present Conciliation Service is, in personnel? If it were made a matter of statutory procedure, as you propose here, before a dispute could be declared to be in existence, a United States conciliator would have to so order it, or so find. I wonder how many times you would have to multiply the size of the present Conciliation Service?

Mr. KUZELL. I have not visualized it as being an excessive burden. I really believe it would not be.

Senator MORSE. Well, let me just guess out loud. I would guess a personnel of 10,000. Just think of the thousands and thousands of contracts.

Mr. KUZELL. The time consumed by a conciliator in an average case is about 2 to 3 days. It does not appear to me that the number of conciliators required would be any greater than the number required during the war when conciliation was a necessary step before certification of a dispute to the National War Labor Board; it would probably be less.

Senator MORSE. But, if you have, as of a certain Monday morning, several thousand disputes in existence, you are going to have to have some conciliators to handle them. They are not going to wait.

Mr. KUZELL. We are looking forward to the period in which we will be able to settle most of our difficulties before there is any need for Conciliation Service, Senator.

Senator MORSE. I pray with you.

Senator SMITH. You may continue, if you will, with your paper.

Mr. KUZELL. At the expense, Mr. Chairman, of probably sacrificing some of the oral argument on some of the other sections I wondered if I might be permitted to continue a little on this phase of bargaining procedure.

Senator SMITH. I would like for you to give your own testimony in your own way.

Mr. KUZELL. Secretary Schwollenbach in his testimony made brief reference to the fact that the President's Labor Management Assembly in November of 1945 made a unanimous recommendation for the improvement of the Department of Labor conciliation and mediation services. And for that purpose an 8-man Labor Management Advisory Council was set up to act with the Director of the Conciliation Service. They made a report on December 16, a declaration of policy, which was followed on December 23 in a speech by Director Warren outlining a procedure.

Secretary Schwollenbach did not lay that on the table. Perhaps he has in mind doing so at his next appearance. I will not be here.

I would like to take advantage to offer some comment on that plan and how it might fit in with this one.

It was a well organized respected committee, a committee of eight, four industry members, two CIO, and two A. F. of L., who proposed that plan.

I have made an interpretative analysis of that plan based on their Director's speech and have had correspondence with the Director of the Conciliation Service and also the benefit of a personal visit with him, and he assured me both in correspondence and orally that the interpretation is correct.

I would like to put in the hands of the committee the outline of that particular plan so that they may see how it ties in with this procedure. This is an interpretive outline of the USCS proposal for procedure for attempting peaceful settlement of industrial labor disputes, as described by Edgar L. Warren, Director, United States Conciliation Service in his address of December 23, 1946, before the Labor-Management Assembly of the Philadelphia area.

Assumptions: It is assumed by this interpreter that the plan is intended to apply to a labor dispute arising from unresolved proposals for a new labor agreement, renewal or modification of a previous one, but not to a dispute arising from a grievance as to the interpretation or application of an existing agreement.

It is further assumed that the plan is intended to apply to such an above-described labor dispute affecting interstate commerce except when subject to the coverage of the Railway Labor Act; and except, perhaps, those strictly in the agricultural field. It is also assumed

that the procedure could be invoked in a dispute not affecting interstate commerce, particularly in the absence of a State code of procedure, at least to the extent outlined in column A below.

Now the types of disputes to be handled are in three categories, which I have given A, B, and C.

Let A designate such an above-defined dispute which is deemed unimportant by the regional director of the United States Conciliation Service branch office covering the area.

Let B designate such a dispute which is deemed important by the same official.

Let C designate a B-type dispute which is vital to the public safety, especially utility disputes.

Now, classifying in tabular form the parallel treatment of the three classes of disputes, A, B, and C, step 1 would be negotiation, direct bona fide negotiations between the representatives of the employer and the employees on the proposals. It is the same in all of these columns.

The Director informs me it is his intention, and the intention of his advisory council, that a step should be proceeded by the proper exchange of proposals.

Step 2, Conciliation: Normal conciliation conducted by a United States Department of Labor Commissioner of Conciliation, to be concluded when he has exhausted his efforts and, thereafter, has declared and defined a dispute to have been created by any proposal having been unresolved and not withdrawn.

Senator MORSE. I would like to interrupt. I have to go and I would like to go into this in great detail with the witness. I have a great deal of confidence in his judgment on these things.

I judge from this that you have no objection to the Conciliation Service remaining a part of the Department of Labor?

Mr. KUZELL. I have no objection, but would recommend that if the Congress sees fit not to set up mediation or conciliation outside the Department of Labor, that in order to make things look right that the organic act setting up the Department of Labor be amended as to correct that sentence which says, approximately this, that the function of the Department is to promote the welfare of the laboring man. I think that that should be so amended that it would say, "The function of the Department is to promote better employee-employer relations"; and, if so, even name the Department the Department of Employer-Employee Relations, rather than Department of Labor.

Senator MORSE. But it is true, is it not, that there are a good many employers, including some that were at your Labor-Management Conference, that think it is a mistake to leave the Conciliation Service as a part of the Department of Labor?

Mr. KUZELL. I believe there is such a bill in.

Senator MORSE. I mean there are a good many employers in the country that believe a Department of Conciliation should be separated from the Department of Labor because of their charge that the present arrangement is partial?

Mr. KUZELL. Well, I do not have any particular objection, based on my experience with the services of conciliation.

Senator MORSE. That is what I wanted to get before I left. Your experience with the Conciliation Service, as an employer, is that you have not received that type of service from the Department that would cause you to join with those employers who believe that it should be separated from the Department?

Mr. KUZELL. That is right.

Senator MORSE. I feel concerned about the fact that a large percentage of the conciliators, at least in the time past, have not been men who have been selected from industry, but have been selected from the ranks of labor. Let me put it this way: You are asking me, as a member of the committee, and other members, to go along with a program, which I make very clear I thoroughly disapprove of, as it remains part of the Department of Labor, because of my complete lack of confidence in the Conciliation Service; you are asking me to go along with a program, based upon your experience, which certainly is entitled to weight, which you have received from this service, whereas there are a great many employers that feel it is a very partial service and they point out in support of their contention that a large percentage of the conciliators have themselves been former union officials, that they come in with not an impartial approach but a labor approach to the problem?

Mr. KUZELL. I think I should have pointed out, Senator, that my acceptance of that service is more or less considered upon improvement of the Service in some manner, and perhaps, as outlined in this plan, a step which provides that labor-management assemblies in areas shall have the privilege of passing upon the impartiality of the commissioners of conciliation, and review other such recommendations.

Senator SMITH. You may continue.

Mr. KUZELL. Well, to save time, I would be willing to let it be filed as a part of the record, with this comment, that I am not putting myself in the position of approving this plan but I am pointing out that several steps in the plan are equivalent to the ones which I have suggested. It does not have the strike vote in it as a step, which I think is necessary. It does provide for labor-management assemblies out in the areas. I am not particularly advocating that; but I would prefer it, I believe, to the additional step of official mediation with a national office and regional offices and all that sort of a set-up.

I think perhaps I would prefer the labor-management area assemblies providing, however, that they would be set up and confined within State lines or to narrow limits in dense industrial areas.

Senator SMITH. And this procedure would be limited to taking care of the cases where a new contract is being negotiated; it has nothing to do with the grievances you mentioned which would be taken care of under the terms of the contract?

Mr. KUZELL. Except insofar as Director Warren pointed out—I am referring now to the United States Conciliation Service proposals—

Senator SMITH. Yes.

Mr. KUZELL. That they would like to proffer their services to disputes arising from grievances where the parties themselves have not provided means of final disposition.

Senator SMITH. Well, that in the last analysis comes down to the interpretation of what is meant by contracts between two parties. It is almost a judicial question. I will not get into that as another point. I do not want to hold up your testimony.

We will accept this in the record, with the limitations you placed on it, as a method of procedure which you would like to have us consider in connection with your own proposals, which are slightly different. Is that correct?

Mr. KUZELL. Yes; but not bearing my endorsement, but to show the possibilities that there are some steps common to both programs and might be an opportunity for further development.

(The report referred to is as follows:)

INTERPRETIVE OUTLINE BY C. R. KUZELL, DECEMBER 26, 1946, OF THE UNITED STATES CONCILIATION SERVICE PROPOSAL FOR PROCEDURE FOR ATTEMPTING PEACEFUL SETTLEMENT OF INDUSTRIAL LABOR DISPUTES AS DESCRIBED BY EDGAR L. WARREN, DIRECTOR UNITED STATES CONCILIATION SERVICE IN HIS ADDRESS OF DECEMBER 23, 1946, BEFORE THE LABOR-MANAGEMENT ASSEMBLY OF THE PHILADELPHIA AREA

ASSUMPTIONS

(1) It is assumed by this interpreter that the plan is intended to apply to a labor dispute arising from unresolved proposals for a new labor agreement, renewal or modification of a previous one, but not to a dispute arising from a grievance as to the interpretation or application of an existing agreement.

(2) It is further assumed that the plan is intended to apply to such an above-described labor dispute affecting interstate commerce except when subject to the coverage of the Railway Labor Act; and except, perhaps, those strictly in the agricultural field. It is also assumed that the procedure could be invoked in a dispute not affecting interstate commerce (particularly in the absence of a State code of procedure) at least to the extent outlined in column A below.

TYPES OF DISPUTES

Let A designate such an above-defined dispute which is deemed unimportant by the regional director of the United States Conciliation Service branch office covering the area.

Let B designate such a dispute which is deemed important by the same official.

Let C designate a B-type dispute which is vital to the public safety, especially utility disputes.

Processing of proposals and of any resulting dispute

	A	B	C
Step I (negotiation)	Direct bona fide negotiations between the representatives of the employer and the employees on the proposals.	Same as for A	Same as for A .
Step II (conciliation).	Normal conciliation conducted by a U. S. Department of Labor commissioner of conciliation, to be concluded when he has exhausted his efforts and, thereafter, has declared and defined a dispute to have been created by any proposal having been unresolved and not withdrawn.	do	Do.

Processing of proposals and of any resulting dispute—Continued

	A	B	C
Step III (reference of certified dispute to assembly).	No provision	Regional director will refer the dispute to the labor-management assembly of the area.	Same as for B.
Step IV (mediation).	do.....	The assembly may assign equal numbers of its labor and management assemblymen as a subcommittee called a peace panel to— (1) Hear the report of the conciliator; and (2) hear the arguments of the union and the employer; and thereafter (3) attempt to mediate; and (4) refrain from making any findings or public recommendations.	Do.
Step V (continued mediation by special conciliation or voluntary arbitration).	No provision.....	If peace panel fails in step IV to resolve any dispute the assembly may— (1) Refer the dispute to the assembly's choice of 1 of the 24 special conciliators of the Department of Labor to continue the mediation efforts; or (2) recommend that the parties agree to a final and binding determination by voluntary arbitration.	If peace panel fails in step IV to resolve any dispute the assembly may— (1) and (2) Same as for B.
Step VI (fact-finding with public recommendations).	do.....	No provision.....	If step V-C-(1) fails or if V-C-(2) is not utilized the assembly may— (1) Recommend that parties consent to present their arguments to an emergency board of inquiry, which will publish recommendations on the evidence submitted.
Step VII (conclusion).	Parties may maintain status quo, or employees may strike, or employer may lock-out.	Same as in A if step V-B (1) fails, or if V-B (2) is not utilized.	If either party rejects the recommendations of the emergency board of inquiry, then it may be anticipated that the publication of the board's findings might develop sufficient public opinion to crack the case.

EXPLANATORY NOTES

The labor-management assembly of the area apparently comprises 24 members, 12 each of the "outstanding representatives of management and labor" in the area. Its only power is stated to be "the power of persuasion." Mr. Warren's address does not indicate the basis for delineation of areas or the basis for qualification and selection of members of the assembly. He suggests that they be precluded from acting as arbitrators. He also offers the assembly the opportunity to review the efficiency of the Conciliation Service, and to judge the impartiality of conciliators.

A special conciliator (for step V) is one of a staff of 24 top-notch conciliators.

The emergency board of inquiry would be appointed from outside the Federal Government by (?). (It is not clear whether the intention is that the assembly shall appoint the emergency board of inquiry.)

Mr. KUZELL. I would not surrender from my scheme the strike vote taken at a critical time, as previously described.

Senator SMITH. Your testimony, as far as strike vote is concerned, seems to coincide with Governor Stassen's testimony the other day with the strike vote as the last step of the proceeding.

Are you going to continue, then, with your regular testimony?

Mr. KUZELL. Yes, sir.

Elimination of industry-wide bargaining and industry-wide strikes: Under the existing inadequate labor laws we have already had too many examples demonstrating the heavy concentration of economic power and actual monopoly of the supply of labor in the hands of a few unions and their leaders. Accordingly, we urge that Congress force the decentralization of unions, require local bargaining on a local class or craft bargaining-unit basis, prohibit the industry-wide strike, and make unions and their officials and agents subject to the antitrust laws. Although industry-wide bargaining units are not required by the present law, the law should go further and prohibit bargaining on an industry-wide basis.

I have here specimens of both CIO and AF of L contracts negotiated in the mining industry on a local basis.

Senator SMITH. Are you giving now your own judgment or are these the conclusions of the mining industry?

Mr. KUZELL. Adopted in their convention and approved by the board of directors.

Senator SMITH. Thank you. I just wanted to get that clear.

Mr. KUZELL. They contain unexcelled provisions from the standpoint of job security, which is especially important to members of the working force, in the form of detailed, workable, and fair seniority provisions to control promotions, reduction of forces, and restoration of forces after a lay-off.

We would like to have those filed with the committee.

Senator SMITH. They will be filed with the committee.

Mr. KUZELL. They also contain detailed grievance procedures, with a definite and adequate timetable for prompt disposition of grievance disputes and their final determination if necessary by arbitration, with arbitration rules. These contracts were not only developed on the basis of local bargaining, but also in the absence of closed-shop and union-shop conditions. The contracts of this company vary in the detail of important provisions, such as seniority and grievance procedure, among different plant units in the same general area of the same company and in accordance with the wishes of the representatives of the local plants. The desire on the part of local representatives for variations to meet their particular conditions have been met to their satisfaction, whereas in industry-wide bargaining or even in company-wide bargaining the local employees would not have enjoyed this advantage.

Senator SMITH. You do not even go then as far as Senator Ball went in his bill for regional negotiation as distinguished from industry-wide. You go right down to local plant levels for the determination of details of bargaining contracts.

Mr. KUZELL. Yes; but I would permit, with the consent of both parties, the consolidation of negotiations of a number of plant units of the same company within the same general area.

Senator SMITH. That would be the same company. I think in Senator Ball's bill the same company bargaining would be recognized but he had the idea of two or three different employers as long as they are in the same area of 100 miles.

Mr. KUZELL. I think I would go further than he does in the single-company angle. I think he did not provide anything to prevent company-wide bargaining on a national scale.

Senator SMITH. That is true.

Mr. KUZELL. I am saying you bargain on a local basis, but with the consent of both parties you can consolidate negotiations for a number of plant units within a given area only.

Just as the public, a few decades ago, recognized the monopolistic power of industrial barons and Congress provided laws to curb that power, so also the public is now recognizing the great monopolistic powers of today's labor barons and dictators and the Congress should now likewise legislate to curb that power.

We believe it has been amply demonstrated that the job security of workmen is developed on the basis of local bargaining. The security of the top labor leader, however, and his monopolistic power, often erroneously masked by the term "union security," is really what is sought by both industry-wide bargaining and the closed shop.

Senator THOMAS. Do you believe that labor organization has developed to that place where its power actually equals the economic powers that the employer always has held?

Mr. KUZELL. We have before us the very prominent instance in which one labor baron has nationalized a whole industry and made the Nation helpless in the face of that situation and could not do anything about it.

Senator THOMAS. Well, I know what you are referring to. But, has he? When you take such a point in regard to his strike as the welfare organization or something of that kind—did not Congress immediately come to the rescue of the employer by the Byrd suggestion right in the midst of a dispute?

Mr. KUZELL. Are you referring to wartime regulations during which the Government stepped in?

Senator THOMAS. I thought you were referring to the last coal strike.

Mr. KUZELL. Yes; I was.

Senator THOMAS. Both of them were coal strikes. Let us stay with our question. I guess we had or else we will not make any headway.

Do you feel that labor has organized to the place where it does have power equal to the economic power of the employer?

Mr. KUZELL. I feel that it has gone beyond that point.

Senator THOMAS. Gone beyond the point?

Mr. KUZELL. No employer can paralyze a whole industry.

Senator THOMAS. Do you mean to say, for instance, that if one company had a monopoly of making a certain kind of nut that went into all of the automobile engines and quit, as the owner of a paper has quit, for example, that that would not constitute an economic power that would hold up all automobile movement?

Mr. KUZELL. That might be true, but I do not know of any situation where any employer has a monopolistic control of that kind.

Senator THOMAS. Well, we are talking theoretically. Can you get all the copper you want today?

Mr. KUZELL. We are producing copper.

Senator THOMAS. Can industry get all the copper it wants?

Mr. KUZELL. I believe so.

Senator THOMAS. Are not some of your companies——

Mr. KUZELL. Not from domestic sources entirely.

Senator THOMAS. Are not some of your companies actually selling copper to Europe, for instance, that might come here?

Mr. KUZELL. I do not know. I am not in the selling end of the business.

Senator THOMAS. Well, you can see what I am driving at, that the mere fact of ownership was the course that gave the employer power. It was from his economic source that labor drew its economic means of living.

Do you actually think that as a result of the legislation of the last 10 or 15 years, the employee group has attained the place where it is equal in power to that of the employer group?

Mr. KUZELL. I think it has exceeded the power of the employer group.

Senator THOMAS. You really think that?

Mr. KUZELL. Yes, sir.

Senator ELLENDER. That is because of the antitrust laws that are applicable to the employer and not to the employee; is that right?

Mr. KUZELL. That is right. We are urging that the antitrust laws bear with equal weight on labor monopolies as they do on industrial monopolies.

Senator THOMAS. And you really think, then, that the Government of the United States has taken care of the underprivileged to such an extent that the underprivileged group of yesterday has become the privileged group of today?

Mr. KUZELL. The balance has swung in the opposite direction.

Senator THOMAS. And that our problem today is labor and not industry?

Mr. KUZELL. It is labor dictatorship and labor barons that need to be curbed today instead of industrial barons.

Senator THOMAS. Who needed to be curbed yesterday.

Mr. KUZELL. That is right, sir.

Senator THOMAS. Well, under those circumstances under what single scheme that could you think of would labor be justified in striking, if it is sitting on top of the world? Surely it should not strike, should it?

Mr. KUZELL. Well, labor is justified in striking by lawful means for legitimate end.

Senator THOMAS. I do not mean justification. I mean that which is taking place today. If labor is sitting on top today, why should it strike? We do not see industry resorting to the lock-out; very much, do we?

Mr. KUZELL. Do you mean, Senator, that if labor controlled the supply of labor and also the purse strings and exercised the prerogatives of management that would be complete nationalization or socialization, or perhaps even worse?

Senator THOMAS. Surely. If you say our trend has gone so far that Government has actually put labor so much on top, why does labor strike then?

Mr. KUZELL. In order to exercise that power.

Senator THOMAS. In order to make the power greater?

Mr. KUZELL. To demonstrate the carrying out of orders of irresponsible labor leaders regardless of the public interest and gain an advantage.

Senator THOMAS. We would never solve the question under those circumstances, because the more advantage you get the more advantage you want, if that is true. We are in a realm of pure logic, I grant you.

Mr. KUZELL. That is right, but I believe that Congress did effectively curb the undue power of industrial barons.

Senator THOMAS. In relation to labor?

Mr. KUZELL. And the public.

Senator THOMAS. But, you see, the strike is not from industry now. It is from labor. There must be something that has not been fixed up yet to bring about that.

Mr. KUZELL. Well, I do not set myself up as an expert in the field of economics, and feel, therefore, at a disadvantage to discuss purely economic questions in this hearing.

Senator THOMAS. Well, I have gone far enough, but I just cannot see why the fellows who are sitting on top and are sitting pretty want to interfere with that sitting.

Mr. KUZELL. All I am attempting to do here, Senator, is to give you some suggestions and recite some events that have occurred in my experience, and hope that what I may contribute will help to create better employee-employer relationships.

Senator THOMAS. That is the object of all of us. You see, the use of the commerce clause for the benefit of the people has been the thought of all of this thing. The public welfare is the thought behind it all, is it not?

Mr. KUZELL. I have at my side Mr. F. J. Ryley, who is a lawyer and better qualified to answer some of these questions, perhaps.

Senator SMITH. I think you might continue.

Mr. KUZELL. The industry-wide strike emanates most easily from industry-wide bargaining disputes. It is conceivable, however, that an industry-wide strike could emanate from a number of simultaneous local situations or disputes in the same industry, and that possibility must also be limited in some manner.

Under the present law, the National Labor Relations Board does set up bargaining units on the local basis in many cases. In the mining industry, particularly in the West, the Board has adopted the pattern of setting up bargaining units on the craft basis within single plants. This is as it should be. The Board perpetrated a grievous error in departing from this procedure at the great Morenci open-pit mining, milling, and smelting operation in Arizona. There is a voluminous record of this unfortunate experiment, where the Board found, after a very considerable amount of turmoil, labor unrest, and interference with production, that it had to reverse its position and restore the bargaining set-up to the craft basis.

We maintain that the time is now ripe for the Congress to specify by law that bargaining units must be so set up, and to prescribe that bargaining should proceed on the basis of such units, with the further provision that negotiations with several affiliated locals at several

plants of a given company in an appropriate area may be consolidated upon mutual consent of the parties, but that in no case may industry-wide consolidation of negotiations be permitted.

Now, with such a set-up and with a statutory code of bargaining procedure and conciliation as above recommended, and with the decision to strike—deferred until after the declaration of a dispute—to be determined by an election on a local basis, we believe that the variation in voting between locals will prevent a calamitous industry-wide strike. In no event should concurrent local work stoppages in an industry be permitted in such number that the public health and safety be vitally affected.

Senator SMITH. You would say, then, from your argument, if 10 local plants were involved, with the strike vote, that each would have the vote counted separately and would not all go out together, even though a majority of all voting might vote for a strike?

Mr. KUZELL. Those who voted in the negative would not go out. Those who voted in the affirmative would have authorized legally a walk-out. But the variation would prevent, in our opinion, a calamitous industry-wide strike. Now, for industries which affect the public welfare, there should be some limitation on the number of units that would be permitted to be out concurrently so as to not paralyze that particular service that is affecting the public health and safety. However, as I said before, that is getting a little beyond the declaration adopted by the American Mining Congress. The first thing would suit us—that there be local bargaining as prescribed by a statutory requirement—and we will take our chances on what happens after that.

Senator ELLENDER. And in the strike you would want all union and nonunion members to vote?

Mr. KUZELL. That is right.

Senator ELLENDER. The majority of those affected, in other words, would have to vote in the affirmative?

Mr. KUZELL. That is right.

The next subject is: Make unions subject to the antitrust laws.

As a further and necessary means whereby the country must extricate itself from the position created by the heavy concentration of economic power in the unions, it is our view that the Clayton Act should be amended in the manner proposed in S. 55.

Section 204 (A) (1) of S. 55 declares that a secondary boycott is unlawful.

The minority members of the Senate Committee on Education and Labor in their report on the proposed Federal Mediation Act of 1946 gave a clear picture of the dangers to the public from the use of the secondary boycott as an economic weapon. I will not repeat the many good examples.

It is not proposed that the primary boycott be outlawed. It is not the purpose to deprive unions of the use of legitimate economic weapons. It is the secondary boycott which is under attack.

The secondary boycott is a boycott against a person not a party to the labor dispute, as distinguished from the primary boycott which is directed against the party to the labor dispute. In the secondary boycott the union threatens or causes third parties loss of business through

boycotts, picketing, or strikes unless they sever business relations with the one being primarily boycotted.

In the appearance of Secretary Schwellenbach before this committee, the example of the secondary boycott was used where the retail grocery stores were picketed because they were selling soap manufactured by a company with whom the union had a dispute. The Secretary agreed that it was not equitable to bring the retail stores into the dispute.

The United States Supreme Court has declared that under the present law unions may employ the unrestricted use of secondary boycotts, and has pointed out to Congress that it is the only body which can correct the situation.

In the hands of powerful unions the secondary boycott is a ruthless and irresistible economic weapon. The wielder of the weapon determines the economic life or death of the victim. The possession of such an economic weapon invites unions to be reckless in their demands and does not promote industrial peace nor contribute to sound economic conditions.

No one condones the general strike, which is a sympathy strike designed to inflict hardship on a community in order to force settlement of a dispute, and yet the same argument used to support the secondary boycott is applicable to the general strike, namely, that all employees are interested in the rate of pay, hours of employment, and conditions of employment being paid or applicable to the employees of the employer. These have been several general strikes in different parts of the country during the past year. The committee might well give thought to the possibilities that a continued use of the secondary boycott will usher in an eventual epidemic of general strikes.

The next subject is, Make Unions Suable as Legal Entities.

The mining industry believes that unions should be made responsible for the acts of their officers and agents and should be suable as legal entities in the courts.

Even labor unions concede that they should maintain their obligations under labor agreements. However, the temptation to obtain a gain by a breach of the contract is strong. One who is subject to no penalties except his own conscience is under strong pressure to break the agreement and to justify the act by a reason satisfactory to him.

An example of this occurred in a strike by the International Union of Mine, Mill and Smelter Workers in Arizona commencing in March 1946. The story is, briefly, that that union, as well as A. F. of L. union, and the company entered into what might have been called a tripartite negotiation of improving the wage scale, wiping out intra-plant inequities, and a lot of other things, which amounted to an increase, on the average, across the board, of 3.39 cents per hour. That was a very detailed job. It was presented to the Nonferrous Metals Committee of the War Labor Board for approval and was approved; same type of job 2 years ago as the United States Steel Corporation did 2 weeks ago, and which was hailed as quite a feat in the paper.

This job was done, as I say, as a tripartite job, CIO, A. F. of L., and the company. It was approved and deemed very commendable by the Nonferrous Metals Committee in the War Labor Board.

In the deal there was this pact:

This subsection and schedule B cannot be changed or modified prior to September 27, 1946—

that was the portion of the contract pertaining to the rate of pay schedule—

notwithstanding any provision to the contrary and article 3 hereof. If the national wage stabilization policy is amended by increasing the present 15-percent limit of the Little Steel formula, then in that event the single issue of a general wage increase within the permissible adjustment allowed under the amended Little Steel formula may be opened for bargaining negotiations upon written request by either party.

Representation was made to the Board in the Form 10 that—

All wage issues are therefore settled until September 27, 1946, with the single exception of the opening of the issue of a general wage increase upon the condition stated—

and further that—

A period of wage demand tranquillity against either increases or decreases is assured until the fall of 1946.

Here is what happened. The 15-percent formula, known as the Little Steel formula, was modified and increased to 33 percent in October 1945. At that time the increases since January 1, 1941, in the straight-time rates of pay, weighted average, for all of the employees represented by the CIO at Bisbee, Douglas, and Morenci had equaled 46.8 percent. They had also received a night-shift bonus amounting to an additional 3.4 percent.

Under the pact there were no grounds for an increase.

The union, in justifying its position and its subsequent strike in violation of the agreement, took the position that the agreement not to seek further increases—

clearly presupposed the continuation of the existing general wage stabilization policy.

However, the CIO called a strike on March 20, 1946, even though the company on March 15 had called representatives of A. F. of L. unions, railroad brotherhoods, and the International Union of the Mine, Mill and Smelter Workers with which it had contracts in Arizona, and had offered them an 18½-cents-per-hour increase in the rate of pay contingent upon price relief.

The price of copper had been 12 cents per pound since 1940, and all agreed that it had to be increased. The A. F. of L. and the railroad brotherhood unions accepted the plan and continued to work at branches where there were no CIO unions. Employees in bargaining units represented by the A. F. of L. and brotherhood unions at branches where the CIO locals also represented employees were prevented from working by the strike by the CIO. The price of copper was later increased, and a wage increase of 18½ cents an hour was granted, retroactive in full to March 15. That strike lasted more than 3 months and was actually called and prolonged as a part of the union's national strike strategy.

I am mentioning that at this point because that is the only instance of any labor trouble we have had in the way of a work stoppage that amounted to anything, and it resulted from an effort of a union to

break away from local bargaining and get into Nation-wide bargaining and impose that situation on us.

They actually had orders to pursue that policy and they were ordered to strike.

Senator SMITH. That is the kind of case that I consider a matter for judicial interpretation by the court as to what the contracts meant. I always maintained a case like that was a breach of contract.

Mr. KUZELL. That is one thing that is lacking in the present law.

Senator SMITH. Unquestionably lacking in the present law, but that is the kind of case for which we ought to have some sort of labor tribunal or court to interpret those contracts as to what they mean, and then enforce them after they have found what they meant. Senator Ferguson and I are working on that, to set up a tribunal to interpret existing contracts. It has nothing to do with making of contracts, but with interpreting existing laws. I think that is the right approach to this kind of problem you are presenting here.

Mr. KUZELL. We thought that the committee would be particularly interested in this particular instance. The men suffered as a result of that policy.

Senator SMITH. The men always suffer as a result of a mistaken policy of that kind.

Mr. KUZELL. The next section has to do with mass picketing, and it also has a specific example in it which I would like to read in some detail.

Senator SMITH. I might ask you one question. The only issue we have had in mind on mass picketing is whether it is a matter of Federal law or whether it is a matter to be handed back to the States to take care of under their own policing.

Mr. KUZELL. I think this example has in it an opinion from the person who gave the example on that particular point. The episode happened in Butte, Mont., in 1946.

Mr. Roy H. Glover, western general counsel of the Anaconda Copper Mining Co., has described the acts of violence which accompanied a strike at Butte, Mont., last spring. When the strike was called the company asked for maintenance personnel pursuant to a clause in the union contract. The union replied that a special meeting had been held and it was there decided that it would not honor its agreement to authorize such employment of its members during the strike.

In view of the decision of the union the company canvassed its supervisory personnel to assist in this emergency by manning the pumps to keep the mines from flooding, and to fight underground fires in order to keep the mines from being destroyed. Many of the supervisors were afraid to assist the company because of the fear of violence, but others disregarded the threat of the union and reported for such work.

Mr. Glover said:

While these men were on the jobs gangs unrestricted by law-enforcement authorities tortured their families, completely ruined many of their homes, as much as \$5,000 damage done in a single home. They said it was kids doing it. Pianós were lifted out and thrown on the sidewalk and chopped and destroyed. Porches were torn off their homes. Their windows were broken out and their houses were hacked and chopped to pieces.

At the Morenci branch of Phelps Dodge Corp., at the start of the CIO strike in March 1946, pickets in large and compact groups were placed in front of the gates to the company property.

Senator ELLENDER. You would not classify that as picketing, would you? That is actual violence. Would not that be covered by State laws wherever it occurred?

Mr. KUTZELL. May I ask Mr. Ryley to answer that question?

Mr. RYLEY. Yes, I think that is true, Senator, as Mr. Kuzell has pointed out on page 14 of his statement, he agrees with the minority members of the Senate Committee on Education and Labor in their report on the proposed Federal Mediation Act of 1946 that the Federal Government has some obligation in this situation now, and you will recall that statement, that they thought there might be Federal obligation now because of the situation that had developed.

Senator SMITH. I submit that is the issue—whether we want to pass Federal legislation and have it federally enforced, or put the responsibility back to the States to take care of violence cases. There is no dispute as to the necessity of stopping violence. We are all right on that, I think.

You may continue, Mr. Kuzell.

Mr. KUZELL. Unfair labor practices by employees and unions: I think I previously pointed out that the National Labor Relations Act is not a labor relations act at all. It merely implements the national policy to encourage the organization of labor unions, and it purports to protect the right of the individual to make his own decision as to affiliation with a labor organization.

I would like to indicate here that the National Labor Relations Act is not a labor relations act at all. It is a misnomer. It merely implements the national policy to encourage the organization of labor unions, and it purports to protect the right of the individual to make his own decision as to affiliation with a labor organization. It prescribes certain unfair labor practices by employers and provides penalties therefor. To become really a labor relations act, it should be amended in many respects, not only as outlined in other sections of this statement but through the inclusion of provisions recognizing unfair labor practices by employees and unions and providing adequate remedies.

Senator SMITH. Are you familiar with the bill Senator Ball introduced covering amendments to the Wagner Labor Relations Act?

Mr. KUZELL. I have read it, but there have been so many bills that I cannot keep them in mind.

Senator SMITH. I am in the same confusion. We have had so many that it does confuse you, however, this bill does aim to do the very thing you are calling for.

Mr. KUZELL. I am in favor of it.

Senator SMITH. It makes the Wagner Act a two-sided argument. The Wagner Act, concededly the magna carta of labor, was to protect the workingman when he needed protection and put penalties on employers. The time has come to balance it so we recognize unfair practices on either side. That is what you are arguing for?

Mr. KUZELL. That is right.

Senator SMITH. That is the purpose of Senator Ball's bill 360, to balance that.

Mr. KUZELL. Then I am in favor of it. Employees should be protected in their right to decide that they do not desire to affiliate with a particular labor union or any labor union at all, and should be able to bring and maintain an unfair labor practice charge in the event that they are coerced because of such a decision. Employers should likewise be able to bring and maintain unfair labor practice charges.

In both cases remedies should be provided for violation. Nondemocratic elections and other procedures within unions should be on the unfair practice list.

In the list of unfair labor practices by employees and unions should be included such practices as the secondary boycott, the sympathy strike, the jurisdictional strike, the strike to accomplish unfair or illegitimate ends, strikes in violation of existing agreements and strikes unlawfully called, and strikes designed to coerce the Government directly or indirectly by inflicting hardships on the community.

The next point is freedom of speech: Employers should be as free to talk to their own employees about unionization, bargaining negotiations, or strikes as are labor representatives. The National Labor Relations Board has by interpretation and the use of "imponderables" in its findings of fact made it extremely risky for any employer to speak to his employees about the effect of unionization in his plant, or about the course of bargaining negotiations, or about an existing strike.

Mr. Gerard D. Reilly, formerly of the National Labor Relations Board, is of the opinion that "an employer should have the right to speak pretty freely to his employees about the long-term effect of unionization in his plant correlative with the right of the union to say anything it pleases."

An employer should be able freely to inform his employees about the negotiations between the company and the union without being guilty of an unfair labor practice. The employer has a very real interest in seeing to it that all of the employees affected get a full and complete picture of the negotiations and of the possible consequences of any action or strategy on the part of the union. The union should not be given the exclusive privilege of telling the employees of what is going on. This is the power of censorship and such monopoly of information lends itself to propaganda. It can have the effect of creating and aggravating disputes.

The National Labor Relations Act now provides that employees on strike continue to remain employees. This provision, coupled with the National Labor Relations Board's zeal to protect a strike from any interference by an employer, has cushioned the strike by making it almost certain to the employees that they will not lose their jobs if they strike. It is an unfair labor practice for an employer to be in any way connected with a back-to-work movement.

S. 360 wisely provides that a striking employee loses his status as an employee if he has been replaced, or has refused an offer of reinstatement to substantially equivalent employment. Such a provision enables an employer to start up his plant and for the first time in many years be able to notify his employees that if they do not return by a

certain date their employment will be terminated. The restoration of this right will again cause the union and the employees to weigh the risks of a strike as carefully as an employer must do.

It appears that one of the purposes, or at least one of the results, of the act has been to drive a barrier between an employer and his employees. Restrictions and obstacles in the way of communications have been created which are almost insurmountable. These barriers should be removed by restoring the right of the employer to speak freely with his employees on any subject including union matters.

Preponderance of evidence: We believe that the circuit court of appeals should be permitted to reverse the National Labor Relations Board if its findings of fact are not supported by the weight of the evidence. The theory of the present provision of the Wagner Act does violence to the American concept of "checks and balances." Under the present provisions and Supreme Court rulings, a circuit court is nothing more than a rubber stamp insofar as findings of fact are concerned.

Welfare funds and other payments to unions: We believe that industry, employees, and the public should be protected by legislation from the adoption, coerced by any means, of centralized "welfare funds" such as have been instituted in the coal industry.

There is nothing to prevent a union from setting up a "welfare fund," if deemed desirable, and obtaining contributions directly from any employee who wishes to participate. Even in such a fund, equities of contributors should be protected by State or Federal law as is done for life insurance, investments in building and loan associations, and so forth.

Mr. J. D. Francis, president of the Island Creek Coal Co., spoke at length on this subject and since we are in agreement, we will not elaborate further in this statement.

The next subject is supervisory, professional, and administrative employees: There has been plenty said on this subject of foremen. Our position is that not only foremen who are supervisors, but also professional and administrative and confidential employees should be exempted from the coverage of the act.

Senator ELLENDER. Would you cover them specifically or could we amend the definition placed in S. 55 and others so as to cover professional and administrative employees? How would we handle that?

Senator SMITH. It is all a question of definition.

Senator ELLENDER. I presume you would have to name them and define what their duties are.

Mr. KUZELL. Amend the definition so as to leave no chance for mistaken interpretation.

It is our position that Congress should make perfectly clear, what we believe to have been the original intention, that supervisory personnel shall not be considered employees for the purpose of the act.

Now, the administrators of the act have gone so far that they have said, and I am referring particularly now to a statement of Chairman Herzog, the present incumbent, that even if a group of vice presidents petitioned for a bargaining unit they would be granted the bargaining

unit in accordance with the theory of the administration of that act. That is getting up into the executive ranks.

Senator ELLENDER. That such persons would be considered employees of the corporation of which they are vice presidents; is that right?

Mr. KUZELL. Vice presidents would be considered employees and could have a bargaining unit of their own.

Senator SMITH. That was said to be the logic of the last ruling of the National Labor Relations Board. I do not know whether Mr. Herzog actually said that himself, but it has been said here that the Board, by a 2 to 1 vote made on that subject, this would be the logic of it. What we are trying to get at is the definition of supervisory employee or foreman, and I think it is agreed that they should not be employees of the same union with which they have to bargain. That makes them torn asunder between two masters. If they are bargaining for the management they should not be members of the union they are bargaining with. The principle is simple and most labor men I have talked to agree. You are adding here professional and administrative employees. I do not think that has ever been questioned by anybody. They do not belong to the union. They might, but I do not have any evidence.

Mr. KUZELL. Our position goes further than I understood from your statement of what it is. We believe that none of these groups, supervisory, professional, administrative, or confidential, should have the protection of the act, be exempt from the coverage of the act; in other words, those to be exempt from the coverage of the act, even if they are in independent organization. We go that far in our recommendation.

Senator ELLENDER. Is not a supervisory employee a kind of administrative—does not he administer things for management?

Mr. KUZELL. Well, he is an executive employee. He is in a position of authority.

Senator ELLENDER. But he administers.

Mr. KUZELL. And has a responsibility, and particularly in the mining industry the foreman or shift boss works underground in remote places, sometimes thousands of feet or even miles away from the portal, and he is in charge of a group of men for whose safety he is responsible, and he is responsible for the maintaining of discipline and the use of good judgment and mining a block of ore so that it will not cave. He has a very distinct function which is inseparable from that of management.

Senator ELLENDER. Well, there is no doubt in my mind if we exempt supervisory employees we should by all means exempt professional and administrative employees.

Mr. Chairman, I suggest that Mr. Ryley, who is a good lawyer, take S. 55 and S. 44 and work on them so as to cover the professional and administrative employees.

Senator SMITH. I think that is a good suggestion.

Mr. RYLEY. You mean later?

Senator ELLENDER. Surely.

(Subsequently the following statement by Mr. F. J. Ryley was received:)

SUGGESTIONS BY F. J. RYLEY, ATTORNEY AT LAW, PHOENIX, ARIZ., ON AMENDMENTS TO S. 55 TO COVER PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES

The following amendments to S. 55 are suggested:

Page 14, line 11: After "supervisor" insert "administrative employee, or professional employee".

Page 15, line 3: After "subjects." delete the closing quotation marks.

Following this, insert the following:

"(13) The term 'administrative employee' means—

Any employee (i) who regularly and directly assists an employee employed in an executive or administrative capacity where such assistance is non-manual in nature and requires the exercise of discretion and independent judgment; or (ii) who performs, under only general supervision, responsible nonmanual office or field work, directly related to management policies or general business operations, along specialized or technical lines requiring special training, experience, or knowledge, and which requires the exercise of discretion and independent judgment; or (iii) whose work involves the execution under only general supervision of special nonmanual assignments and tasks directly related to management policies or general business operations involving the exercise of discretion and independent judgment; or (iv) whose work involves a confidential relationship with an executive, administrative, or professional employee.

"(14) The term 'professional employee' means—

"(A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; and (v) of a character which, under State or local law, would generally require licensing, certification, or registration of the practitioner, if he made such services available to the public; or

"(B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (A), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (A)."

Time has not permitted as full a study of the proposed definitions as desired and upon returning to Arizona Mr. Kuzell and I would appreciate the opportunity of further study and communication with the committee with respect to these suggestions.

Senator SMITH. It is now 5 o'clock. I want the witness to give us the rest of the high spots of his report, because we should adjourn.

Mr. KUZELL. Yes; I will be glad to.

I will go immediately to compulsory union membership and be as brief as I can. On that I would like to direct your attention to another example that is pertinent. This happened at the Douglas, Ariz., smelter. The CIO imposed fines upon three men running from \$100 to \$300 per man. Then the union refused to accept the regular monthly dues of these men until the fines were paid, and demanded that the company discharge the men for failure to maintain their membership in good standing under a maintenance-of-membership provision imposed by the War Labor Board.

This maintenance-of-membership provision provided:

In order to maintain good standing in the union for the purpose of paragraph 2, a member shall be required to pay only the regular monthly dues and comply with any penalties that may be imposed upon him by the union for specific acts involving the violation of any of the terms and conditions of this agreement, or of any of the terms and conditions of the constitution or bylaws of the union.

These men denied that they were subject to discharge under the facts of the dispute and the dispute was accordingly submitted to arbitration under the grievance procedure. They were employed in an iron workers group and claimed that they were being expelled because there was some discussion among them on withdrawing from the CIO at the end of the contract year.

The union made the pretext at the arbitration hearing that the men were guilty of discriminating against Mexicans and had, therefore, breached the union constitution. The union contended that the union's bylaws and constitutional provisions meant whatever the union representatives said they meant and was subject to no other interpretation. If the union said the men violated the constitution by certain discrimination, then that was conclusive upon everyone.

The union refused to submit to the arbitrator any record of the trial of the men to show the specific acts with which the men were charged. The union said that to show the arbitrator their minutes would violate a principle of unionism and would be the end of free labor in the United States. The arbitrator, Dr. Haynes, of the University of California at Los Angeles, ruled against the union.

In the next dispute case before the War Labor Board, the Board at the request of the union struck from the maintenance-of-membership provision the above-quoted definition of "good standing."

Now, the constitution of that union provided that a member may be expelled if he commits an offense in violation of his obligation or against the good and welfare of the international, his union, or any union of the International Union of Mine, Mill, and Smelter Workers, the general officers, members of the executive board, or any members of the international, or in violation of the constitution of the International Union of Mine, Mill, and Smelter Workers of affiliated unions.

Article IV of the constitution provided that—

The president shall have the power, with the consent of the executive board, to revoke the charter of or penalize any local union for violation of the constitution, or proven treachery to the principles of the International Union of Mine, Mill, and Smelter Workers.

Now, it is interesting at this point to read the preamble to the constitution. There are seven points, but I will read No. 3 as an illustration:

We hold that the class struggle will continue until the producer is recognized as the sole master of his product.

I belonged to a union once when they brought in a resolution that anybody that drank beer from a certain brewery in that town would lose his good standing. I was an employee of Anaconda Copper Mining Co., and if I went out and drank a Montana brand of beer, I would lose my job in the copper-mining industry.

Compulsory unionism is a weapon which good union leaders do not need and which irresponsible union leaders should not have.

In support of that statement I would like to refresh your recollection by stating that the Railway Labor Act has for many years prohibited the closed shop, but that has not destroyed unions. The railway labor organizations are the most responsible, stable unions that I have ever had to deal with. I have never had a dispute with them that we did not eventually settle ourselves without going to somebody else. That has been the result in that group of unions under the prohibition of the closed shop.

Furthermore, of the eight locals that I deal with that are affiliated with two of the prominent national railroad brotherhoods, I know that their membership is practically a hundred percent on a voluntary basis. It is because the union has made itself worthy of the voluntary association of these men.

Senator SMITH. You would not permit closed shops then, even by a vote, say, of 75 or 80 percent of the members in a plant, assuming that the employer would agree to that in a bargaining arrangement? We have had some cases where an employer said he would be willing to go along with a vote of 75 or 80 percent of the members of the plant to set up a closed shop. You think that ought to be outlawed by law?

Mr. KUZELL. I think so, on general principles.

Senator SMITH. But on the point, you would like to see us pass a law that closed shop is forbidden even by agreement between the parties concerned?

Mr. KUZELL. Yes, sir.

Senator ELLENDER. You would want to outlaw it by law?

Mr. KUZELL. Yes, sir.

Senator ELLENDER. Why would it not be acceptable to leave the question of closed shop or union shop to collective bargaining; in other words, if you want it, take it, and if you do not want it, you do not have to? Would not that be more democratic?

Mr. KUZELL. The only democratic way to settle the problem, as I see it, and analyzing also your question, Mr. Chairman, as to who should vote and how many, on the question of the closed shop, the effect on the public welfare is so great that an election to determine that question should not be confined, certainly, to the union members. It should not be confined to all the employees in the bargaining unit. It should be decided by a vote of the public citizenry on account of its far-reaching effect on the public welfare.

We have had a number of recent State elections. We had one in Arizona where there was a vigorous campaign on the part of the union. In that election the citizens of the State outlawed the closed shop or what was called a right-to-work amendment, which was the same thing. It goes so far as to outlaw maintenance of membership. It was carried by a 4 to 3 vote and carried in every county of the State without exception. That was the will of the people on this matter.

Senator SMITH. That was in Arizona?

Mr. KUZELL. Yes, sir.

Senator SMITH. A number of States have passed constitutional amendments outlawing the closed shop. It is a very important ques-

tion. But you are asking us to pass a law saying that even if the parties agree between them that the closed shop shall be declared illegal. That is the issue we have presented by your case and by others who come before us. That is presented by Senator Ball's bill. He has a bill which definitely outlaws and forbids the closed shop, even by agreement.

Does that in any way curtail power of free agreement between the parties across the table?

Mr. KUZELL. Not at all. That is why I submitted these two contracts, so that if any member of the committee is interested enough to make or have made a comparison, I challenge him to produce any contracts which are better than these from the standpoint of a contract that has in it provisions that are of interest to the man in the working force.

Now, it does not have the union shop or closed shop in it. We contend that that merely is sought to enlarge and preserve the power of the top labor leader and increase the monopolistic power over labor supply, whereas these contracts which are negotiated not only on the local bargaining-unit basis, but also under non-closed-shop or non-union-shop conditions. They have everything that the man in the working force really wants. That is the purpose of my having introduced them.

Senator ELLENDER. Those contracts to which you refer, and which are good ones, were entered into the laws that now exist?

Mr. KUZELL. Yes.

Senator ELLENDER. By voluntary agreement between management and labor?

Mr. KUZELL. Yes.

Senator ELLENDER. Now, I say to you if you permit management to have free speech why could not similar contracts be entered into by other unions and other managers?

Mr. KUZELL. Well, of course, these contracts, and the provision therein, would merely amount to a scrap of paper if we do not have enforcement provisions in the law whereby unions will be held to their obligations to uphold these provisions.

Senator ELLENDER. Well, of course, what I had in mind was that in addition to freedom of speech the law would outlaw jurisdictional strikes and supervisory employees, and the like. It impresses me that if we pass a law incorporating those things, that is, outlawing jurisdictional strikes, and then restore freedom of speech, that it would not be necessary to pass a law outlawing union shops. My plan would be to leave the decision to collective bargaining.

Mr. KUZELL. Well, there still would be a lot of objectionable features to the closed-shop agreement voluntarily entered into by an employer and a union.

Senator ELLENDER. Such as?

Mr. KUZELL. Well, such as, for instance, the Government lets a contract, public-works contract, for certain improvements. The contract is let by the Government to a contractor. The contractor will pick out a certain fellow and say, "Here, you get me the labor and I will make a closed-shop agreement with you." That fellow goes out

and organizes a labor union around the surrounding territory, where there is a labor supply, and he says to common laborers, "Here, I will give you a job over here at a certain place, you pay me \$25 to get into my union and \$5 a month."

Senator SMITH. I think it is conceded if we do not outlaw the closed shop then we will have to have regulations to take care of those businesses.

I want to make it clear that I am not arguing for or against. I am open-minded on this. It is something we have got to explore. The point has been brought out by a number of smaller businesses that they have solved their employee relationships by making closed-shop agreements. It has been very satisfactory, especially where it is a union shop within their plant. It is not necessarily dictated to by the wider national unions.

Senator ELLENDER. Some bill has been introduced to cover the very point that you have made just now, and I would be in favor of that, that is, to prevent a labor union—

Mr. KUZELL. From racketeering.

Senator ELLENDER. Yes; exactly.

Senator SMITH. It would have to cover the closed-shop situation.

Mr. KUZELL. In order to answer the Senator's question, would you permit us to file a short statement on that, in addition to the one you asked of Mr. Ryley?

Senator SMITH. Very glad to have you do that. We want all the light we can get on the subject.

Mr. KUZELL. Thank you very much.

(Mr. Kuzell submitted the following statement:)

COMPULSORY UNION MEMBERSHIP IS CONTRARY TO PUBLIC POLICY AND SHOULD BE PROHIBITED BY CONGRESS

(Supplementary statement by Charles R. Kuzell)

Since the unions are protected by the National Labor Relations Act against antiunion activities on the part of employers, there is no basis for the argument that compulsory union membership is necessary as a defensive measure against employers. Whether or not it was required prior to the passage of the Wagner Act is not now relevant.

The Railway Labor Act likewise protects the brotherhoods from employer interference, and having provided that protection it prohibits compulsory union membership as no longer necessary for the exercise of the legitimate functions of the brotherhoods. As pointed out in my testimony, this prohibition has had no adverse effect, in fact, the brotherhoods are today among the soundest and strongest of labor organizations.

On the other hand, the National Labor Relations Act, which is an unbalanced law and really not a "Labor Relations" Act at all, does not prohibit compulsory union membership. Unions operating under its provisions and having compulsory union membership have in many instances been reckless in their demands and have arrogantly disregarded the interests of the public.

Although fully protected by the law against employer interference, leaders of such unions still desperately desire the closed shop. This is a defensive provision, now used principally by the union against members and other workers.

Compulsory membership provisions are well named "union security" provisions. They secure the union against any act of an individual which is deemed to be against the "good and welfare" of the union or any officer of the union. The offense may be that the member spoke for the wrong candidate, or testified adversely before a legislative committee, or even that he

drank boycotted beer. An examination of union constitutions will show the autocratic power that unions have over their members.

Unions demand and fight for compulsory union membership. That provision gives the union the power to enforce a real sanction against a man through expulsion from the union—involving loss of his job and entry of his name on the union blacklist. An individual threatened with expulsion for noncompliance with or criticism of union policies or actions is thus faced with the loss of his livelihood. His membership in the union becomes more important than his rights as a citizen. A totalitarian state has no power more effective than this. President Roosevelt recognized this in the coal dispute of 1941 when he said that the Government would not order a closed shop nor Congress pass a law requiring the closed shop; that the Government would never compel the remaining 5 percent of the men who were nonmembers to join the United Mine Workers of America; that it would be too much like Hitlerism.

An employee dealing with a union which has a monopoly of the labor force will hesitate to criticize the union leaders or their policies. An institutional complex takes place which is foreign to our concept of the rights of individuals. The National Labor Relations Act speaks of unions as the agents of employees for specified and limited purposes; the union should not be allowed to convert this function into a power to dictate to and control employees.

Compulsory membership in a union may have an appeal to a group of workers already employed if it can accomplish the result intended of restricting the labor supply in their field. This restriction increases their bargaining power and enables them artificially to increase the price for their services. This is the natural result of monopoly control. Having control of the labor supply, the union is then in position to resist technological advances, and to force employers to divert any savings thus made into still higher wages rather than lower prices to the consumer.

A monopoly of a labor supply benefiting the group protected has an adverse effect on the men excluded. As the number within the group is restricted, the number excluded is increased; and the increased bargaining power of the monopoly group has its counterpart in decreased bargaining power on the part of the excluded group. In addition, opportunity for men to move to other areas or occupations is curtailed by the practices of limiting membership in the union.

It must be kept in mind that unions do not represent the community as a whole but rather a special-interest group within the community. I submit that the question of permitting unions to increase a monopoly through compulsory membership is not one for decision by the special-interest group, but one for the Government, representing the entire people, to decide.

I am sure that Congress would not pass a law requiring compulsory union membership, yet failure to prohibit the practice will permit its extension with all the evils to the public that flow from it.

Everyone recognizes the need for making the unions more democratic. Proposals such as annual audits and reports are suggested. The most effective way to make the unions more democratic is to make them more responsive to their members, to make them justify their position by sound leadership rather than by compulsion.

In response to Senator Ellender's question: The evils of compulsory union membership would not be cured by restoring freedom of speech to employers, outlawing the jurisdictional strike, excluding supervisors from the National Labor Relations Act, and like measures, important and urgently needed as they are. Compulsory union membership is an invasion of the civil liberties of the individual. It should be outlawed in a sound code of labor law.

Senator SMITH. Thank you for your testimony.

The committee stands adjourned until tomorrow morning at 10 o'clock.

(Thereupon, at 5:15 p. m., the committee adjourned, to reconvene at 10 a. m., Wednesday, February 12, 1947.)

LABOR RELATIONS PROGRAM

WEDNESDAY, FEBRUARY 12, 1947

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D. C.

The committee was called to order at 10 a. m. in the caucus room, Senate Office Building, by Senator H. Alexander Smith.

Present: Senators Smith (presiding), Morse, Thomas, Murray, and Ellender.

Senator SMITH. I will call the hearing to order, and I will ask Mr. Case—Representative Francis Case, of the Second District of South Dakota—who is our first witness this morning, to present his case. No play upon words intended, Mr. Case. We appreciate your coming here because I know you have a rare contribution to make on this important subject, and we will be glad to hear you.

STATEMENT OF HON. FRANCIS CASE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. CASE. Mr. Chairman, your courtesy in arranging this time is very much appreciated. I hope that I may be able to make some suggestions that will be of some assistance to the Senate committee in its consideration of this matter.

I might say at the outset that the statement I have is relatively brief, and I think I would like to read that. It includes an analysis or an analytical index of the bill which I have introduced in the House, which suggests in a very definite way what I feel might well be incorporated in the bill and pass this session of Congress.

Our job, of course, Mr. Chairman, not simply to pass a labor bill, but to pass a constructive bill which will promote peace in industry, with justice. What we do in this Congress we must live with.

There are certain outstanding issues as everyone knows. Some of them are—

1. The powers and activities of the National Labor Relations Board, particularly the wisdom or unwisdom of combining investigator, prosecutor, and judge in one agency.

2. Coercive practices by labor organizations toward workers.

3. Unions of supervisory employees.

4. Handicaps to collective bargaining, such as limitations on free speech, inability of employers to call for elections, and similar problems.

5. Mutual responsibility under contracts.

6. Selfish or monopolistic practices which injure an innocent public, such as industry-wide bargaining, jurisdictional strikes, secondary boycotts, and sympathy strikes; and finally

7. The problem of "the end dispute"—the question of what you are going to do when you have a strike vitally affecting the public welfare and all attempts at collective bargaining, mediation, and voluntary arbitration fail.

Personally, I have thought that whatever we do on these matters should be put into one bill and integrated with our present laws. Piecemeal legislation might lead to a crazy-quilt result. We should simplify, not make more complex.

Senator SMITH. Congressman, do you prefer that we ask questions that may occur to us as you go along or wait until you have finished your statement?

Mr. CASE. Just as the committee pleases, Mr. Chairman.

Senator SMITH. I would just like to ask you one question there. That question of piecemeal legislation came up, of course, in our committee. We have been discussing it. There are certain things that it seems to be admitted are evils which can be corrected, and reasonably promptly, with a fairly simple bill; others are very controversial matters, and the feeling was that if we wait to settle all these controversial matters we might get no bill at all; that it might be impossible to pass a bill similar to the so-called Case bill which we had last year, and that it might be better to undertake to pass a bill similar to that which Senator Taft, Senator Ball, and I introduced, to cover more obvious and admitted evils, and then consider such difficult problems as closed shop, industry-wide bargaining, compulsory arbitration, and so on as separate issues to be dealt with later. I do not want to take your time to get into that too much now, but do you not feel that in the interest of getting necessary legislation passed promptly, it might be wise to adopt that procedure?

Mr. CASE. There are two thoughts that I have on that. One is the parliamentary problem we have in the House of Representatives, and I mention that in the next paragraph of my statement. I was going to give that, and I will then go to the other reasons.

It should also be kept in mind that the House of Representatives has a general rule on germaneness which prevents broadening the scope of a bill beyond that reported by a committee. I recognize the Senate does not have such a rule. In the House, however, if we want to amend the present National Labor Relations Act, the basic bill must include some amendments of that act; otherwise the amendments would not be germane to the bill.

The second thought I have in that connection is that if you analyze the whole problem there are some ways in which the things that are proposed even in S. 55 bear upon provisions of the National Labor Relations Act and bear upon the whole problem. The question of compulsory arbitration which you mentioned addresses itself, of course, to the problem of the end dispute, and in the thinking that I have done on the matter I have made a suggestion toward that which I think it integrates itself with the mediation machinery proposed in the bill and is an attempt, at least, or a suggestion, in the direction of

handling the problems to which it addresses itself in this bill and is integrated with it.

In my own attempts to write a comprehensive yet integrated bill, I found it helpful to think of the three natural areas of relations between management and organized labor. They are, it seems to me: First, the stage of seeking recognition; second, the stage of living together; third, the stage when orderly relationships break up and become everybody's concern.

Senator SMITH. May I ask what is meant by "the stage of seeking recognition"?

Mr. CASE. That would be the area of relationship between employees and their employers when they are seeking to obtain the rights of collective bargaining, and pertains particularly to the problem that was taken up by the National Labor Relations Act.

It seemed logical, then, to divide the bill into three parts, or titles, each one dealing with these natural areas of the problem, and within each title, to deal with the individual questions in a natural sequence. This I have tried to do in a bill which I have introduced in the House, H. R. 725. It has occurred to me that the quickest and clearest way to bring my specific suggestions before you is to incorporate an analytical index of that bill in this statement, at this point, and I will read the index of analysis. The declaration of policy is very brief. The first clause proposes that it be declared that it is the policy of the United States to establish fair and reasonable relations for the maintenance of equality in collective bargaining between employers and employees. That, you see, deals with that first area in the problem.

The second thing is also stated in the declaration of policy or purpose of the bill to be, "To establish facilities for the mediation, conciliation, or voluntary arbitration of disputes which may arise."

The third clause of the declaration of policy deals with title III: "To protect the public against the burdening or obstructing of commerce, whether resulting from privileges created by Government or resulting from the natural pursuit of self-interest."

Then title I would be devoted to the establishment of relations between employers and employees, and deals with amendments to the National Labor Relations Act.

Section 101, subparagraph (a) redefines "employee" in the National Labor Relations Act to exclude the individuals whose work has ceased by reason of participation in a jurisdictional or sympathy strike. I might say, Mr. Chairman, that that integrates with the provisions later in the bill which deal with the jurisdictional or sympathy strike.

Senator SMITH. I take it you define what is meant by jurisdictional and sympathy strikes somewhere in the bill?

Mr. CASE. That is correct.

Subparagraph (b) permits recognition of foremen's unions if they are restricted to supervisors and are not affiliated with unions not so restricted. This subparagraph also defines jurisdictional strikes and sympathy strikes.

Senator ELLENDER. You would deny them the benefits under the Wagner Act?

Mr. CASE. If they are engaged in a jurisdictional strike or sympathy strike they would lose their status of employee by definition.

Senator ELLENDER. How about the foremen's union?

Mr. CASE. Senator, in my own thinking I have come to this point of view, that a flat denial of the right to collective bargaining for all supervisory employees defeats itself; that is, you cannot forbid supervisors from joining rank-and-file unions. You can deny them the rights under the Wagner Act, but just to say that they may not belong to the supervisors or the rank-and-file unions does not accomplish anything, because I think that would probably be unenforceable—that is, if they want to join. Of course, you have the right to discharge them.

In this section of the bill I carry over the definition of supervisory employee, which I think the Senator from Louisiana was the author of, and was embraced in the bill adopted last year. But I draw the line between the so-called Packard case and the Jones & Laughlin cases, and deny the benefits of the act to organizations of supervisory employees if they permit members of rank-and-file unions to belong to them—that is, if they are of mixed membership or if they have affiliations with the rank-and-file unions. In other words, by the definition of the labor organization which may be recognized under the Wagner Act, I would recognize organizations of supervisory employees that are restricted to supervisory employees and that do not have affiliations with rank-and-file workers.

The President in his veto of the bill last year recognized that there was a difficult problem in supervisory problems, and he said the problem was where you should draw the line. I draw it between the Packard and the Jones & Laughlin cases.

Section 102 increases the National Labor Relations Board to five and makes the salary \$12,000, putting it on a par with the Mediation Board proposed last year, and the Industrial Disputes Commission proposed in this year's bills, H. R. 725 and S. 55.

Section 103 deals with industry-wide bargaining. Subparagraph (a) establishes freedom for employer as well as employee to choose representatives in collective bargaining. Subparagraph (b) requires the National Labor Relations Board to obtain assent of employer when the contract involves employees of more than one employer.

Senator THOMAS. In allowing the employer to choose his own representatives for bargaining, is there not danger of moving the clock back too far and getting right into the place we were in when employers bound themselves together not to recognize unions or union organizations?

Mr. CASE. Of course, I think that would be modified by the other provisions of the National Labor Relations Act, but the National Labor Relations Act does assert the right of employees to choose their representatives in bargaining, choose who will sit at the table representing them, and it seems to me only fair that the employers should choose who sits at the table for them, and that while the employees might want to present the contract on their side representing all of the employees of an industry, the employer, if he is to have an equal voice, should for himself be able to say whether or not he wants to be

included in an industry-wide contract. Some employers I find feel that if they are forbidden to engage in any industry-wide contract, they may be, so to speak, knocked off one at a time if they do not have the strength that they would have if they bargained on an industry-wide basis, and it seems to me that the employees should be able to bargain, if they want to, through their international organization or national organization, but that the employer should have the same right either to bargain individually on their side of the table or with other employers, if they so desire.

Senator THOMAS. You make it entirely voluntary?

Mr. CASE. I make it entirely voluntary.

Senator THOMAS. Is my logic entirely wrong? The objection which appeals to me to making Nation-wide bargaining on the part of labor is that it destroys the strength of the local entity, the local group. Isn't there great danger if you invite by law the same thing as to the employer? United States Steel—using the name merely as an illustration—might hire a professional bargainer, just as we assume the labor group have become professional in their operations, and a little steel company off in the southwestern part of the United States may be bound by some action taken by this big group that might ruin them.

Mr. CASE. Under the language of the bill, Senator, a little steel company if it did not want to be bound by that would not be bound.

Senator THOMAS. You are stressing the voluntary part of it?

Mr. CASE. Yes; I would require the National Board to obtain consent in writing of the employer if he is to be represented by a Nation-wide group of employers.

Senator THOMAS. Assuming the logic of Senator Ball in his bill, that Nation-wide bargaining is bad for labor in that it does not give the little fellows the right chance, you don't think that that would be bad for industry?

Mr. CASE. Well, Senator, whether bad or not, it seems to me the people who are most interested would be the best judges as to a given instance, and if they preferred one method or the other, and you give them the right to choose, certainly they would have their own weapons of protection.

Senator SMITH. I would just like to ask this. I gather from your presentation here that you do not have any objection, fundamentally, to industry-wide bargaining, as long as both parties are properly represented?

Mr. CASE. That is true, unless you reach a point where you find that both parties are conspiring against the public interest in such a case where you have a contract which is arrived at by collective bargaining on both sides, both employer and employee, and if that reaches the stage where they conspire to fix prices or allocate territory, engage in monopolistic practices, I think that should be forbidden under the Clayton Act, and the later sections of the bill deal with that problem.

Senator SMITH. Do you want to apply the Clayton Act?

Mr. CASE. I would if they by industry-wide bargaining sought to do the things which are forbidden by the Clayton Act.

Senator SMITH. Then, what I call national paralysis cases would probably be taken care of by that procedure under your theory?

Mr. CASE. That is correct. I have a definite suggestion along that line.

Senator MORSE. Congressman, yesterday we had Mr. Roth, of the American Shipowners Association, testify before us, and he testified very strongly in favor of industry-wide bargaining. Now, I quite agree with you that if in a particular case the antitrust laws are violated, they ought to be enforced, and I think that they can be enforced without destroying industry-wide bargaining. But he pointed out the great importance to the maritime industry of industry-wide bargaining. He testified, in effect, that until they had it they were confronted with the old divide-and-conquer strategy of unions. He testified that they had to do business with a great many unions, and that as a result of their so-called master contract arrangement, they brought a considerable amount of stability into the industry. Now, I understand, in answer to Senator Smith's question, your position is that you are not opposed to industry-wide bargaining, so long as it is voluntarily entered into, so long as it does not bind any employer except a member of the employers association that enters into the master contract, and so long as it does not violate the antitrust laws. Is that a fair statement of your position?

Mr. CASE. That is pretty well stated, Senator Morse. I think perhaps I should read the language that I propose for amending section 9 (b) of the National Labor Relations Act by inserting at the end thereof this sentence:

If the Board determines that the unit appropriate for the purposes of collective bargaining includes the employees of more than one employer, no one of such employers shall be bound by such determination unless and until he shall have signified to the Board in writing his willingness to be so bound, and unless and until such employer does so signify the unit appropriate for the purposes of collective bargaining, it shall not be treated as the employer unit.

Senator MORSE. If he files with the Board the articles of the employers' association, which articles always contain the provision that for the life of the contract the members thereof shall be bound thereby, would that be satisfactory?

Mr. CASE. Assuming that they joined the employers' association voluntarily. I am merely seeking to establish for the employers the same right to determine who represents them at the bargaining table, that the Wagner Act establishes for the employees.

Senator MORSE. I quite agree with you, therefore if they have the situation that they had in the fabricated-steel plants, about which we had testimony yesterday, where there is no bargaining, they are just blanketed in under Big Steel bargaining. Of course, you cannot call that, as Mr. Sampson pointed out yesterday afternoon, industry-wide bargaining, but I am talking now about what is a very important point, at least to my way of thinking, and as I understand it, it is your view that in a situation where there is an employees' association, employer X is a member of that association, and he voluntarily gives to the association the authority to bargain in, say, the maritime industry covering all the shipowners, to bargain for wages, hours, and conditions of employment for the industry by way of a master contract, you have no objection to that?

Mr. CASE. No; assuming that it is voluntary on his part, and, of course, does not run into conflict with the antitrust laws.

Section 104 amends section 8 (2) of the National Labor Relations Act to permit the employer to free himself from the death sentence for company unions, and permits the employer to contribute to welfare funds without being an unfair labor practice on account of company domination.

Section 105 adds certain unfair labor practices for representatives of employees, and incorporates in the Wagner Act a paragraph practically parallel to the present section 8. That would be accomplished by inserting in the act right after section 8 language providing that it shall be unfair labor practice for representatives of the employees to do certain things, and among them I will just cite briefly these:

1. Coercion of employees.
2. Violence upon employees.
3. Seizing or damaging property of employees and blocking of highways.
4. Withdrawal of essential maintenance employees.
5. Refusal to bargain collectively when a majority is established.
6. The calling of strikes without a majority vote and secret ballot.

Section 106 suggests that the National Labor Relations Board should consider the wishes of the employees in fixing the size of the bargaining unit. It does not interfere with the right established by the Wagner Act for the NLRB to do it, but does put upon them the injunction that they should give some heed to any representations from the employees. It also permits employers as well as employees to request elections.

Section 107 introduces a relatively new feature, and that is to give the Attorney General, along with the NLRB, the right, which the Board now has, to file complaints on unfair labor practices. We hear a good deal of discussion and we read a good deal about the undesirability of having the functions of investigator, prosecutor, and judge wrapped up in one organization, the National Labor Relations Board. To minimize that, or to reduce the objections to it, I have made two or three suggestions, and the first one is that the Attorney General should have, in the name of the Government, the right to file complaints of unfair labor practices. That would be designed to destroy the argument that sometimes the Board has a bias which inclines them to favor one side or the other.

Senator ELLENDER. Who would try that case?

Mr. CASE. In the first place, if it were a complaint, of course it would be before the National Labor Relations Board, but if it came to seeking an order to require restraint or something of that sort, the Attorney General would have the same right to go before a court as the National Labor Relations Board has.

Senator ELLENDER. There would be no change except to permit the Attorney General to prosecute, and it would have to be before the NLRB?

Mr. CASE. It would give the Attorney General the same right that the Board now has.

Senator ELLENDER. And it would have to go before the Board?

Mr. CASE. Not in the case of review. You can take decisions of the National Labor Relations Board before the court, or the National Labor Relations Board may apply for an order to require restraint. The Attorney General would have the same right.

Senator ELLENDER. But instead of the Board doing it, you confer that right on the Attorney General?

Mr. CASE. I would also leave it to the Board. The value of the suggestion it seems to me, is that it would provide for any situation where you felt the Board was recalcitrant or was inclined to favor one side or the other, that the Attorney General might have that right. I don't open that right up to the private employer there, but I do say that in the name of the Government if something reaches the high level of attention of the Attorney General of the United States, he should have that right. I am inclined to think, by such canvassing as I have made informally, that there would not be too much objection to that.

Senator SMITH. What you are really driving at is to separate the functions of prosecutor and judge. I am very much interested in that. I would like to ask you a question at this point.

I have been exploring, with Senator Ferguson, the possibility of labor courts paralleling our Federal court set-up. They would have jurisdiction over just two limited areas:

1. Interpretation of contracts already entered into, those contracts made in conformity with the labor laws.
2. Interpretation of labor laws.

It seems to me that that sort of a set-up in our Federal structure would help to expedite labor cases and would be very desirable. Of course, they would have nothing to do with the writing of the contract itself or the matter of bargaining, but once the contract is made, the court would have jurisdiction in those two areas, interpretation of the contract and interpretation of what the language of the labor statutes means.

I am just raising that point now to see whether that would be in line with your thinking in separating the functions of prosecutor and judge, or whether we would be making progress if we set up such a court.

Mr. CASE. While I gave some consideration to that, Senator, I finally rejected it in my own mind, fearing that there again we were making our labor legislative picture too complex; that by creating a special system of courts we would have another agency and might have questions of conflicting jurisdiction. However, the point that you have a court for interpreting contracts, I think is very interesting, in view of the provision I have later in the bill, providing that in the case of jurisdictional disputes the district court might be used to render declaratory judgment in accordance with the provisions in the Judicial Code at this time.

Senator SMITH. One objection that has been made to using the existing Federal courts is that the calendars are so congested, that cases in which decision is so urgently needed would never get to them in time to prevent the calling of strikes, as we would with special courts dealing with these special things. And we are distinguishing very clearly between justiciable questions that the court ought to try, and

administrative rulings. Too frequently a really justiciable question gets into the area of administrative ruling. That is what I object to, and the confusion by having prosecutor and judge in the same office. I think you and I are aiming at the same result.

I won't detain you, but I just wanted to get that on the record as my thought touching the point we are discussing here.

Mr. CASE. There are two other suggestions in section 107 for working on this problem. One is to remove the requirement that the ordinary rules of equity shall not control in proceedings before the Board.

Senator SMITH. Rules of equity or rules of evidence? Is that word "equity" correct, or should it be "rules of evidence"?

Mr. CASE. Well, the sentence—do you have a copy of the Wagner Act? It is the final sentence. I think I have it here. The amendment strikes out that last sentence, which says that the rules of evidence in courts of law or equity shall not control in proceedings before the Board.

Paragraph (c) requires the weight of competent evidence, and paragraph (d) requires substantial evidence as to facts in court reviews. That is changing those particular sections or language in the Wagner Act.

Senator ELLENDER. The Board prescribes what is substantial evidence and as to the weight of the evidence?

Mr. CASE. Well, that is in the paragraph of the Wagner Act which deals with review by the court, whereas now the act requires the finding of facts by the Board to be binding on the court, if supported by evidence. I think the court would determine whether it was substantial evidence, but I tried to avoid there throwing upon the courts the burden of going back and rehearing the evidence, so to speak, or passing upon it.

Senator ELLENDER. You think that language would permit the court to say whether or not the evidence was substantial?

Mr. CASE. I think it would, taken in connection with subparagraph (c), which requires the Board in the first place to consider the weight of competent evidence. I have been confronted with instances where they said the findings of the Board were binding upon the court if there was any kind of evidence at all, if there was a scintilla of evidence. I am trying to avoid that situation, and I thought that would reduce the objection to the Board acting in a quasi-judicial capacity in passing upon complaints.

Senator SMITH. This point has been raised by a number of other witnesses, and we are very glad to have your thoughts on it.

Mr. CASE. Section 108 carries the affirmation of the protection of the right to strike, peaceful assembly and peaceful picketing, and prohibition against involuntary service.

Senator MURRAY. Mr. Case, have you considered the impact of the Administrative Procedures Act, which was adopted by the Congress and was intended to apply to all agencies? That act covers this subject, does it not?

Mr. CASE. It deals with it, but in view of the expressed language of the National Labor Relations Act, it seems to me it would be desirable to deal with that directly.

Senator MURRAY. Then you have one set of rules for this agency and different rules for other agencies. That act was intended to relate to all agencies of the Government.

Mr. CASE. Well, it seems to me that you have one rule for this agency now and other rules for other agencies, for courts and other administrative boards. This would tend to bring the National Labor Relations Board more in line with other procedure now, where there is one rule here and another rule there. That is certainly the case now under the NLRA.

Senator MURRAY. I understand that the reason for enacting that act was to provide the same rules for all of the agencies of the Government, and when cases come before them they are required to establish the matter that they have in mind by substantial evidence.

Mr. CASE. Does the Senator feel that the Administrative Procedure Act amends the National Labor Relations Act?

Senator MURRAY. No, but it lays down a general rule as to the character of evidence which is necessary to base any ruling on.

Mr. CASE. Well, either the language of the National Labor Relations Act means what it says or it does not. If it does, then isn't it amended by the Administrative Procedures Act? Then it seems to me something of this sort is necessary.

Senator MORSE. I am not sure whether it amends it or not. I think we will have to have a court decision on that. I am inclined to think it was not the intention of the Congress when it passed the act, that uniform rules of evidence should be applied by all administrative tribunals and as a supporter of that act, that is the argument I made on the floor of the Senate, that that ought to be the rule, and if that is true, would you be willing to accept then the language of that act by way of amendment, binding upon the National Labor Relations Board?

Mr. CASE. Of course, if the court passes upon it and says that is the law, it would be the law, but it seems to me difficult to overlook the plain statement in the Wagner Act that the findings of the Board shall be binding as to facts upon the court, or that the ordinary rules of evidence shall not control in the proceedings of the Board unless there is an express repealer.

Senator MORSE. Your statement is not quite clear to me. Let us assume that the courts should hold, as they might, that it is going to require specific amendments to the statutes governing the various administrative boards to put the evidence rule of our administrative law act into application. They might hold that way. In order to make perfectly clear our position in regard to the National Labor Relations Act, why not propose, by way of amendment to the uniform Administrative Law Act, that the rule shall apply to the National Labor Relations Board, which will remove any doubt as far as Congress is concerned, of the intent to have that rule apply to the National Labor Relations Board the same as to other agencies? Of course, if we do that, it would mean some difference between such an amendment and the amendment that you propose.

Mr. CASE. That might be, but I am inclined to think that the suggestion of the Senator would be well worth study and consideration. It does seem to me, however, that we should clarify that situation.

Senator MORSE. I think it should be clarified, but what you are proposing here is a rule of evidence at variance with the uniform administrative procedure act, and I thought that we were pretty much of one opinion in the last session of Congress, that there ought to be a uniform rule, so we adopted this act with the substantial evidence rule in it, and as you know, it was fought on the floor of the Senate for a time. I think it is a pretty good rule, and I would like to see it uniformly applied to all administrative law tribunals, and of course, I would like to argue before a court that we have, in effect, laid it down as a rule of evidence that has to be applied. But the court might not go along with that argument, so, to remove the doubt, why not just take the language of that act and make it as an amendment to the National Labor Relations Act?

Mr. CASE. I am not going to try to answer the thing completely here, but I do think that is a very constructive suggestion and probably should be considered along with this approach. I do feel that since there is some question as to whether or not the Administrative Procedures Act would repeal or offset the specific language in the National Labor Relations Board Act, consideration should be given to that problem.

Senator MORSE. I agree with that, but in this area of compromise—and I do not need to tell the gentleman from South Dakota that is the way we work out legislation in this committee—do I understand that we would not be going too far afield, as far as your point of view is concerned, if we worked out such a compromise? In other words, am I to understand that you are not adamant in the position that these particular rules of evidence are the ones that ought to be applied by way of amendment, but that we ought to have a uniform rule applicable to all administrative agencies?

Mr. CASE. I have great respect for the legislative process as such, and as you have described it. I recognize that the way to get results is to try to work something out, and as I said at the outset of my remarks, our job is not simply to pass a labor bill; it is to pass a constructive bill, and remember that what we do in this Congress we are going to have to live with. I would like to see a workable law passed that would bring us peace in the industrial field and insurance of justice, so we would not have this recurrent flare-up. We should not pass a bill that is merely going to be a red flag, and then march up the hill and march down again. We should try to get something that will stand up and do the job that needs to be done.

Title I, as I have indicated, deals with that first problem of industrial relationships, the relationships between organized labor and the National Labor Relations Board and their operations.

Title II takes up the problem of adjustment of disputes; that is, arising at the stage where you have organized labor and employer relationships, you have disputes arise, and title II seeks to deal with the problems that arise in that field. Largely, I might say, this follows the language of the mediation portions of the bill that was passed by the Congress last year, that again are incorporated in S. 55 and are incorporated in the bill which the Senator from Oregon has introduced, but with one or two differences, and I will merely call attention to those differences.

First of all, I use the term "industrial disputes commission" rather than "board." There is a reason for that. It seems to me that the commission, the term "commission" is more descriptive of the functions of the mediation agency than a board. The term "board" suggests an arbiter, the determination of settlement by the Board of something. A mediation commission, in my judgment, should be an agency which seeks to lead the parties into settlement. A mediator, I believe Webster says, is the go-between as an equal friend of both parties. The mediation machinery, it seems to me, should be something functionally akin to the grievance committees under the National Railway Labor Act, should be something that seeks to find the problem and the issue, seeks to find a common ground between the two parties and lead them to it. So I suggest the term "industrial disputes commission," rather than "board," partly because of the functional problem I have just mentioned, partly also to make a clear differentiation and quick differentiation from the National Labor Relations Board or the National Mediation Board provided under the Railway Act, and things of that sort. The use of the term "board" again it seems to me invites confusion.

Senator SMITH. You would have it outside the Department of Labor, an independent set-up?

Mr. CASE. Yes. I would take the functions of the Conciliation Service and transfer them to the Industrial Disputes Commission, but it seems to me that the mediation machinery should appear before both parties to a dispute as entirely without bias or prejudice, and I would accomplish that partly by the prescription for the qualifications of the members of the agency, but in addition to that, let them be created entirely independent. I feel that the provision of the bill as it passed last year was sound in that respect, and I think that keeping it in the Department of Labor handicaps the agency and what you want it to do.

Now, I have elaborated a little bit on the provision for voluntary arbitration, and of course, through this section of the bill we lay the obligation on the employers and the employees to seek the peaceful adjustment of their problems, and then to require also, under your waiting period, that if all other efforts fail you propose voluntary arbitration, but that arbitration should be voluntary in the sense that it would not be binding upon the parties unless they agreed to it in advance. If they agreed to it in advance it would be binding upon them, and I would like to suggest there that a panel of arbitrators be created, and that in case the representatives of employers and the employees are unable to agree on the third one of the arbitrators, that is, the mutual party, so to speak, that he should be selected by the Court of Appeals for the District of Columbia. That, I think, is perhaps a little different from what has been previously suggested.

Finally, the last section in title II provides that when disputes threaten substantial interruption of essential service, industrial disputes, or anything else—that there is a great emergency—they may report the matter to the President, but there their responsibility ceases.

Senator SMITH. Do they declare the emergency or does the President declare it?

Mr. CASE. They do not declare the emergency. They merely report the situation to the President.

Senator MORSE. Let me interrupt just a moment, Congressman, to go back to something. It is a detail, but the bill will be successful only to the extent that the details are workable.

Take this provision for the appointment of arbitrators by the Circuit Court of Appeals of the District of Columbia. That is a provision which I question.

In the first place, don't you think that the many labor contracts in the country that may require the appointment of an arbitrator, because the parties cannot agree on one, will place a tremendous burden on this one court in the country?

Mr. CASE. Of course, in the first place the bill carries a provision for the creation of a panel of not less than 30 individuals on nomination by the President and confirmation by the Senate. Those would be arbitrators chosen to represent the interests of the public in labor disputes submitted to arbitration. In making such appointments the President would provide, as far as practicable, for representation of the various sections of the country. This is language I am reading practically right from the text of the bill.

Then if the arbitrators chosen by the employer and those chosen by the employees as their representatives are unable to agree on the selection from the panel of any of the remaining three arbitrators, the Chief Justice of the United States Court of Appeals for the District of Columbia shall make the selection of such arbitrator.

Senator MORSE. From that panel?

Mr. CASE. From that panel, yes; which would reduce the job somewhat that the Senator has pointed out.

In addition to that I had in mind that the Court of Appeals for the District of Columbia stands on a little different basis than other courts. You understand I am not a lawyer, but in going into this it was brought to my attention that the Court of Appeals in the District of Columbia is, to a certain extent, an administrative court, and that the Congress has exclusive legislative jurisdiction for this area of 10 square miles, which is the District of Columbia, and that the Congress would have authority to impose duties upon that court, where it might not on other courts in the country. I am not sure that that is a settled fact under the law, but it is an opinion that has been expressed to me, and I think it is perhaps supported by the findings in the Supreme Court when the question of reducing judicial salaries was before the court.

Senator MORSE. I may be wrong about it, but I just think that a panel of 30 would not scratch the surface of the job.

Mr. CASE. The language says "not less than 30."

Senator MORSE. It would require many times 30. What about the affidavit of prejudice? Do you preserve to the parties the affidavit of prejudice? I raise that question because I happen to be of the opinion that arbitration is not one whit better than the confidence the parties have in the arbitrator. If they don't like the color of his necktie I don't think they ought to have to serve under him. They ought to be allowed an affidavit of prejudice without cause, because if arbitration is

going to function effectively they have got to have faith in the arbitrator, otherwise it is a useless process. Do you provide any affidavit of prejudice?

Mr. CASE. I don't believe I have that in there, but I certainly would see no objection to incorporating it.

Now then, title I of the bill deals with that first area of obtaining recognition.

Title II deals with the living together stage.

Title III seeks to deal with problems that arise when the relationships between employer and employee get out of hand for voluntary methods and become a public concern. That deals with questions of industrial paralysis, as the Senator from New Jersey said, and other matters which bring in vital public concern.

Section 301, which takes up right after section 206, authorizes the President to create an Emergency Commission when he finds that public welfare, public health or public safety are in danger, this Emergency Commission to be appointed without prejudice or bias by the United States Court of Appeals for the District of Columbia.

In further answer to the question that was raised a moment ago, as to whether or not the Board should make the finding of emergency, it cannot. It can report matters to the President, but the President, in my judgment, should on his own responsibility make the finding of emergency if he is going to authorize the creation of an Emergency Commission. And there again I use the device of letting the actual Commission be named by this judicial body, the court of appeals. The Commission would report within 30 days, and the obligation to maintain the status quo would continue through that period of time.

The report should be made public. It would be confined, in the language I suggest, to the wages and hours and working conditions, but could prescribe other issues that might be involved.

Now then we come to the problem there, remembering that this is the end dispute. This is the type of dispute where all methods have failed, where collective bargaining has failed, where all efforts at mediation have failed, where all efforts at conciliation have failed, voluntary arbitration have failed and we come to the problem of protecting public welfare and the appointment of an Emergency Commission.

Senator SMITH. And this is resorted to only in cases that will result in national paralysis, emergency cases? Is that true, or is it for any dispute? I thought from the way we moved into this title III, these were cases where the President has declared an emergency. You are limiting this special procedure to those cases?

Mr. CASE. That is correct. And when the emergency has been found by the President and the Emergency Commission has been created, then you have got to come up finally to answer what you are going to do in the final test. It would be hoped, of course, that you would solve your problems long before this, that they would have been solved by collective bargaining, that they would have been solved in the mediation, or would have been solved by voluntary arbitration, but you come finally to the final case, as you did in the railway strike, where all your fine machinery of the National Railway Labor Act has not averted the problem, and you had a situation

that confronted the country when it came before the joint session of Congress last year, and suppose you have got a Nation-wide strike, what are you going to do? This proposed creation of the Emergency Commission is safeguarded by this judicial appointment, so to speak. Then you have got to answer the question "What are you going to do with their finding?"

First of all, you give an opportunity to both parties to accept it. If the representatives of the employees do not accept, then it is provided in the language that I suggest that you have a secret ballot of the workers themselves, and take a little additional time to take that ballot under the supervision of the National Labor Relations Board.

Senator SMITH. That ballot would contain the simple issue: "Do you accept the findings of this Emergency Board or do you strike?"

Mr. CASE. That is correct.

Senator MORSE. It does not propose to put them in the Army?

Mr. CASE. No; it does not propose to put them in the Army, but if the employees accept, then I propose that the findings, or that the recommendations of the Emergency Commission would be binding upon the employer for a period of 6 months.

Senator SMITH. He has no option then?

Mr. CASE. He would have no option for the period of 6 months. There are two things I would like to say about that.

First, in one respect that could be regarded as an extension of the status quo for a period of 6 months, except as the status quo would be modified by the findings of this Emergency Commission, which is more or less of a judicial body.

The second thing is that you must consider the alternative to it. The alternative, we have been told up to date, was Government seizure, and then the enforcement, the establishment of the employer with an ex parte contract, as has been the case in the coal-mine trouble, and as we have seen by the reports in the press this morning, the coal-mine operators do not want to go on with the contract embodying the welfare fund in the form in which it was negotiated by Mr. Krug. The alternative to having something which becomes binding on the employer, it seems to me, has been up to this date Government seizure. The Smith-Connally Act is going to expire. Then you won't have Government seizure, but you will have proposals for Government seizure if you don't have something equal to that, so I suggest that the employer live with the recommendations of the emergency commission for a period of 6 months at least, and try to work out something in that period of time.

Now then, what happens on the other side? If, under the language of the bill, after the President has created this emergency situation, you have an actual strike in an essential or monopolized service or industry—not the threat of a strike, but if you have an actual strike in an essential or monopolized service or industry, which burdens or obstructs commerce in such a way as to endanger the public welfare, health or safety, after the President has authorized the creation of an emergency commission for a particular labor dispute, then the Attorney General of the United States would be given unquestionably the power to go into court and ask for a restraining order against the strike, and would have, without any question of judicial doubt, the

right to do what the Government has attempted to do in the coal-mine case, which would be to ask for an injunction against it.

Senator SMITH. That is in case the employees voted to strike instead of accepting the mediation?

Mr. CASE. That is right, if they voted to strike, that is, not if they voted to strike, but if they actually struck. I recognize, of course, that you might have individuals quitting, and that could not be forbidden if we wanted to, under the Constitution.

Senator SMITH. You mean concerted strike?

Mr. CASE. I mean a concerted strike, differentiating between the right to work or quit work individually.

Senator SMITH. Irrespective of whether or not that final vote has been taken that you have been speaking of?

Mr. CASE. That is correct.

Senator SMITH. I am trying to visualize the purpose of the vote. If it doesn't have any other effect it just gives opportunity for them to settle gracefully or else take the arm of the law on their necks. Is that right?

Mr. CASE. You might put it that way, Senator, but it might be also that in the taking of the vote it would develop that it was satisfactory to the employees. It might conceivably be satisfactory to the employers, too. Certainly, with all the safeguards we seek to put up to avoid ever having a dispute reach that final stage, and then to provide for some finding by the emergency commission, no great injustice should be done to either party that would be comparable to the injustice that would be done the public if you did not have some provision to carry on the essential service, and it seems to me you finally arrive at the point where you have got to consider the basic question of public welfare, and if you reach that point you have got to have some answer to it.

Senator SMITH. Or you have the alternative of Government seizure, taking over and running the industry from the Government standpoint?

Mr. CASE. Yes.

Senator SMITH. I don't like Government seizure. I agree with you on that. I am just trying to explore this other approach.

Mr. CASE. It seems to me we ought also to try to find some answer which avoids making it desirable to either the employer or the employee to throw their problem into the lap of the Government, in the hope that they will get a better deal there than they can by working the thing out. We ought not to make a final solution that is really an advantage to either side. There ought to be some risk involved to either side in letting the thing go to that final stage.

Senator SMITH. I agree with you. I think we should do everything to induce them to come to an agreement between themselves, not just pass the buck to the Government. That is why I think this emergency machinery should not apply to an ordinary dispute that does not disrupt an essential service. I think such a dispute ought to go to strike, if necessary.

Senator ELLENDER. Representative Case, do you define the industries as to which the President may declare an emergency?

Mr. CASE. No, Senator, I do not. The bill that passed last year limited the emergency commission to public utilities where the rates were fixed by public bodies. That was met with the objection, and it was cited in the President's veto, that it only answered part of the problem. I don't think the President meant it to imply, but it might also seem to imply, that he thought the idea was good, but why limit it to public utilities where rates are fixed by public bodies? He didn't give any reason therefor, but I thought the reason was we already have rates fixed by public bodies, which must take into consideration the matter of wages, but you also have types of public welfare problems in the end dispute that exist outside of public utilities.

Now, I have thought of the different suggestions that have been made, one of limiting this to geographical areas, to strikes that extended beyond certain boundaries; also the suggestion that you limit it to strikes involving a certain number of people, but in my own mind I rejected them for this reason: We had a tugboat strike in New York Harbor with 3,400 people alone, and yet it affected the public health and safety of 7,000,000 people to the extent that the mayor of New York took it upon himself to declare an emergency, and suspended the schools and suspended public meetings of all kinds, and interrupted the transportation service, because public welfare was involved.

Take a strike like that at Pittsburgh, of the electrical industry. That might be a public utility, but you have things which you cannot classify quite as public utilities, and it seems to me your decision must be based upon the facts in a given case. Bear in mind that the enforcement of this feature of the bill rests upon a determination finally by the court, too. The Attorney General would not be allowed to stop a strike by putting a finger out here and saying, "You are going to stop this." He would have to go to a court and there in court prove that this concerted action had either the purpose or the necessary effect of such a critical nature as to constitute a conspiracy by striking—not by threat of strike but by strike in an essential, monopolistic industry as to burden or obstruct commerce in such a way as to endanger the public welfare.

Senator SMITH. If the President had made the same finding earlier than the Emergency Commission, then there would be a double check.

Mr. CASE. That is right.

Senator SMITH. But there would not be an automatic injunction.

Mr. CASE. There would not be any automatic injunction simply because of the presence of an emergency. There would not be automatic injunction if nothing happened, but if you had a strike, an actual strike, and if that strike went to the extent where the public welfare and health were involved and it was susceptible to a showing that such was the case, then he might grant the restraining order.

Senator ELLENDER. You would let the President determine that?

Mr. CASE. Not the President, although, of course, he would to the extent that he would declare the emergency condition.

Senator ELLENDER. Mr. Case, in S. 404 there are defined the term "labor dispute," also the term "essential industry." In that bill, "essential industry" means:

* * * any of the following industries in any case where it is an industry affecting commerce: Communications; production or transmission of electric energy; production of gas, coal, or petroleum; production of steel.

Now, then, can you think of any other case that would not be covered under that definition?

Mr. CASE. What about a strike in a major hospital?

Senator ELLENDER. In a what?

Mr. CASE. A strike in the services affecting a major hospital.

Senator ELLENDER. Well, I do not know that we should have jurisdiction in a case like that. A major hospital, you say?

Mr. CASE. Yes; in a major hospital.

Senator ELLENDER. I do not see why we should cover that. It would not affect, and certainly would not endanger the lives of the whole people. It would affect just a segment, and it could probably be handled locally.

Mr. CASE. Recently, Senator, I had the privilege of attending a session of the Conference of United States Mayors. A former mayor of New York City by the name of Fiorello LaGuardia, the author of the Norris-LaGuardia Act, made some remarks in that section, and no one spoke more earnestly of the need for protecting the public health. He used the illustration of a hospital strike quite as eloquently as he could.

Senator ELLENDER. When you say—

Mr. CASE. Then, what about a milk strike?

Senator ELLENDER. When you say public welfare and public health and public safety should be protected, you certainly do not limit that term to extend to a group of maybe 1,000 who may be in a hospital, you must mean the people as a whole.

Mr. CASE. Not necessarily. I should like to ask the Senator about what he would think of a milk strike.

Senator ELLENDER. Well, sir, you are the witness.

Mr. CASE. I am posing the problem of a milk strike in a shed which would concern the city of Washington. Would that be covered by the definition the Senator is suggesting?

Senator ELLENDER. I doubt it, because that does not affect or endanger the lives of the people as a whole. I think if it were a general milk strike, then it would be covered by "transportation," which is included under that definition in the bill.

Senator MORSE. Is the Senator through?

Senator ELLENDER. I am through asking him. He was inquiring of me and I tried to answer.

Senator MORSE. If the case involved an industry covered in this bill, a public industry, would you give your proposed commission the right of making recommendations and, also, the authority to change the rates?

Mr. CASE. No.

Senator MORSE. Such an industry as a public utility is what I have in mind.

Mr. CASE. I propose that their finding should be limited to—I would like to give you the language in the bill, but I cannot seem to find it quickly. However, it is confined to the wages, hours, and working conditions of the laborers involved. I did not deem it wise to give the Emergency Commission power to go into the matter of profit of utilities, or things like that.

Senator MORSE. The thing that troubles me about these public utilities—railroads, hospitals, or milk, which you brought up just now, or any of the others, is that the real employer in most of those cases, or in all, happens to be us, the public. We are primarily concerned, as much so or more so than anyone else, if there is to be a change in the rates, for such changes are going to affect our pocketbooks.

Unless the workers in those industries are thought of, unless you have a procedure whereby those workers can be assured of justice in the settlement of their disputes on wages and working conditions and the like, it is naturally to be expected that they are going to feel that they are imposed upon—and why shouldn't they? Further, the lack of that procedure would impose upon us, upon our pocketbooks, as well.

Mr. CASE. Well, possibly so, Senator, but that assumes a failure on the part of the bodies which have to do with rates to do their duty; and it assumes also the failure of all the other forces that would be at work.

Senator MORSE. At the same time, I do not think that the rate-making bodies should take into account or stipulate that wages to those workers will be such-and-such 2 years from now or 4 years from now or 5 years from now.

Mr. CASE. On the other hand, if the Emergency Commission through its ability to fix wages, or, rather, to recommend wages, should make such recommendation, that would become or might become binding for a period of 6 months. It would therefore seem to me that because of those recommendations it would be obligatory upon the rate-making bodies to take that recommendation into consideration and that they should at the least request for a proper adjustment of the rates.

Senator MORSE. Now, you are leading us into a place where you say we ought to have some procedure that would mean that, if after a fair determination of the merits of the case it were decided that a wage increase is merited, then you say it becomes binding upon the rate-making agency concerned to automatically change the rates to whatever degree would be necessary to meet that adjustment. If the present rates, in other words, cannot permit a decent profit after the finding by the Commission, then those rates should be adjusted. That is what you are saying.

Mr. CASE. It might be that; it might come to that. I would like to say a further word with respect to the question the Senator from Louisiana raised about how sharply in the bill one should seek to define the area of strikes which would be subjected to procedures under our purposes.

I would say that in a small locality or—well, say, a small place where there was a small hospital or something of that sort, a strike there would not, possibly, reach the stage where there would be such

emergency that the President would have to recognize it as an emergency, in the first place.

In the second place it is doubtful, if he did recommend an emergency, that he would do so without having consulted with the Attorney General as to the possible next steps.

Furthermore, it is doubtful in my mind that the Attorney General would ever seek to use this recommendation of emergency unless he had something that had reached a point or a level of national importance, or of sufficiently wide importance that it would warrant such a procedure.

Of course, there is also this factor to be taken into consideration, that many States have procedures which would take care of local situations, including those pertaining to public welfare and health.

Senator ELLENDER. That follows a suggestion I would make, Mr. Case. I doubt if the President should be permitted to exercise that right unless it should affect the people of the country as a whole. If you would relegate that situation to a community only, why, there is no telling where it might lead to.

Mr. CASE. Well, I will go back to the illustration of the milkshed. Many of the metropolitan centers throughout the country, in fact, such metropolitan centers as Washington, Philadelphia, Chicago, or New York, are served by milk producers from more than one State.

Now, in such a situation I doubt if a State law could reach that problem in that particular instance. If you had, in a large metropolitan center, a situation where you had the milk supply shut off, then I do think that you might have an emergency which would reach the attention of the President and which would warrant consideration by the Attorney General.

Senator ELLENDER. I still think it would be advisable to define the industries specifically.

Mr. CASE. It might be.

Senator ELLENDER. That is, define the industries in which the President could interpose and have this Commission that you provide for appointed.

Mr. CASE. Well, as a general proposition, I agree with the idea that it is wise to define, as far as possible.

At the same time, if you are going to run into the possibility of having paralysis, you might have this situation, that your definition will not be broad enough.

In other words, your definition has got to be broad enough in its scope so that somebody can give his attention to the case.

May I proceed?

Senator SMITH. Surely.

Mr. CASE. Now, still bearing on title III, that title deals with the things which are more or less subject to the provisions of S. 55. They are dealt with in S. 55.

That includes provision for secondary boycotts or jurisdictional strikes; it is dealt with the same way as in the bill last year, as far as the adjustments are concerned, but with this important difference.

The President, when he vetoed the bill last year, said that the use of the injunction by the Government where it involved employees of the

Government, was a vital element of national sovereignty, the President said that he would oppose the opening of the door to the private employer.

Now, in my own thinking, I accept that proposition, that it probably would be unwise to open the door to the private employer or, for that matter, to private employees, except under the safeguards provided in the Norris-LaGuardia Act.

I do think that the Attorney General should have the right to proceed as I propose, where you do have secondary boycotts or jurisdictional strikes, or combinations to fix prices in violation of the antitrust law.

I think that the Attorney General, in the name of the Government as a whole, should be permitted to come in there, and I am proposing amendment of the Clayton Act and the Norris-LaGuardia Act to the extent to make that possible.

Senator MORSE. Considering the provisions of section 303:

Makes labor organizations liable to loss of bargaining recognition for 2 years and suit for civil damages in case of sympathy strikes—

as you have in your statement, I have a question about that.

Do you think that the result of the application of that section would be, in effect, to destroy the unions to which it was applied?

Mr. CASE. Well, I would think not. Of course, in such a section, which makes a labor organization suable as an entity, we carry the restriction to that, that it must be to the organization as an entity and that it does not carry any authority for judgments enforceable against individual employees or union members. We desire to avoid such instances as the Danbury Hatters case.

Senator MORSE. Do you think that the right of the union to bargain would survive?

Mr. CASE. Well, of course, it would be within the authority of the National Labor Relations Board to reduce that.

Senator MORSE. Would it make them liable to loss of recognition?

Mr. CASE. Of course, that is for a period not in excess of 2 years, that the National Labor Relations Board may fix.

Senator MORSE. Well, there is plenty of power in there, I assume. It is in there now. It is a question of whether they intend to have it applied.

Mr. CASE. Does the Senator think—may I ask you a question?

Senator MORSE. You need not hesitate.

Mr. CASE. I was going to ask if the Senator thought that the National Labor Relations Board, with the responsibility placed upon it for the true collective bargaining, would fix any terms within that 2-year limit, which would in fact destroy the union?

Senator MORSE. If I were a member of that Board, I would, if that was what the Congress laid down. I would apply what Congress laid down.

Mr. CASE. Well, you would apply it. Now, I noticed in the paper yesterday, I believe it was, that the National Labor Relations Board had denied the benefits of the act to some organization for violating a provision in its own contract against a strike. It was probably a small union, but nevertheless, the principle was there.

I assume that the Board might do that. I personally have confidence that the Board would exercise such judicious powers it has to the end that it would not make an excessive ruling.

I do feel, however, that the Board should have sufficient power to meet the gravity of a situation which might be presented to the Board.

Senator SMITH. We felt, in considering Senate bill 55, that to make this penalty, namely, the loss of bargaining recognition, would put us into a very difficult position.

The reason was that we would have nobody to bargain with. We gave great consideration to that and we threw it out as an improper penalty.

We took a different penalty. Using the seconding boycotts as an example, or the sympathy strike, they both might be made illegal, and we might see that the people participating in those strikes would lose their status under the Wagner Act, if they participated in an illegal strike.

However, we would not want to take away bargaining power, because we thought that that would be necessary during that period that you prescribe of 2 years. We want someone to bargain with.

Mr. CASE. I recognize the force of that argument. I remember when the Senator from Ohio, Senator Taft, last year, developed that point quite strongly.

In one portion of the bill, I, too, have eliminated that; but it seems to me that you could give that power to the National Labor Relations Board, subject to that restriction.

I shall proceed. With regard to jurisdictional strikes, they would be handled the same way, the approach would be the same.

The problem you have in dealing with a jurisdictional strike must be recognized as, basically, the problem of jurisdictional disputes. Now, those jurisdictional disputes do exist, and just to say, "You cannot have a jurisdictional strike," that does not, it seems to me, solve the problem.

I propose, in section 304 (c), declaratory judgments in cases of jurisdictional disputes. I would provide that those disputes should be handled expeditiously.

That is an attempt to make a concrete suggestion by way of finding some manner of answering the question of jurisdictional disputes.

I might say that that grows out of an actual attempt to use that in a case that is now pending in a California court. The attorneys in that case wrote to me saying that they thought there was no bar to their doing that now; nevertheless, they recognized that it was not customary, and they thought that there should be a specific provision in the law providing for the right of the district courts to render services in jurisdictional disputes.

The district courts would step into jurisdictional disputes, upon application of any of the parties involved.

Senator SMITH. Some witnesses have suggested in this connection that there be set up a board made up exclusively of labor representatives, who would work out some machinery through labor itself. They would say, "This is your baby," to labor, with regard to jurisdictional disputes. That has been suggested by some witnesses.

Have you thought upon that at all?

Mr. CASE. Somewhat. I think that proposal has merit for consideration, all right.

I think that certainly you have got to find some way, because the workers themselves will always feel, really, that they are the ones who will suffer the most, in the final analysis, from any strike; therefore, they should have the ability to settle those things themselves. The question is, How?

Senator SMITH. You see, practically all of the labor men I have ever conferred with agree that we should bar jurisdictional strikes; that there ought to be some way for labor to work out those things themselves, without stoppage of work or strikes.

Now, I see no defense to the jurisdictional strike at all; none that I know of.

Senator MORSE. Mr. Case, do you think that it is better to approach this problem through a court of law, than through a decision by the National Labor Relations Board?

The reason I ask is this: Are the questions basic to a jurisdictional dispute primarily legal questions?

Mr. CASE. Yes, to the extent that they are interpretations of contracts.

Senator MORSE. I agree, in many instances; in many other instances, that is not true. In many of those cases, it is just a desire for power.

Mr. CASE. And many of them grow because of practices. For instance, this jurisdictional dispute out in Chicago the other day, as to whether the plasterers or the painters should do the taping of the wallboards that are used before the final painting.

Now, that goes to a practice in an industry, or an interpretation of a practice in an industry.

Senator MORSE. One reason I raised the point is that I happen to be one of those people who think that that is something that possibly is highly colored by economic factors. I believe that such conditions involving economic factors can best, in the first instance, at least, be under the jurisdiction of an administrative tribunal that is charged with the responsibility of dealing with matters in its economic field, primarily.

Of course, all of the ramifications of the situation, of the problems, may refer it to a court—I hope it does not.

However, I would not want to get to the point where we are turning over to the judiciary the determination of basic economic questions. That, in my opinion, would prejudice the labor people more than anything else.

I am willing to have the courts pass final judgment upon a question, but when you come to giving instructions, decisions upon economic and social policies involved, then I say, "Watch out, America," because then I think that you will know a worse regimentation in this country than we have ever had.

There is no worse regimentation than a regimentation by the judiciary.

Mr. CASE. The judiciary, if I may be pardoned for saying so, has, in some parts invited the placing of that burden upon it, by some of the decisions that they have been making.

Senator MORSE. I think that in the past the courts contented themselves upon determining whether or not the law had been complied with, and that is their proper sphere.

However, this is quite a different thing, the turning over to the courts the job of determining an economic dispute. When I say that, I say it with the greatest respect for the courts, as a lawyer.

I want to make it clear that I feel this way in the interest of promoting industrial harmony in this country. I think that they ought to have the job of deciding whether or not justice has been rendered under procedural rights; but I think, at the same time, that the administrative tribunal that is charged with the responsibility of settling a social or economic problem involving labor, I think that they ought to be very careful about turning over these labor-management problems to the judiciary.

Pardon my interruption; I did not mean to take up so much time.

Mr. CASE. I will proceed as rapidly as I can.

Senator SMITH. Yes, sir. We do have other witnesses—two of them.

Mr. CASE. Section 305 establishes equal responsibility and liability for employers and labor organizations. It makes the unions suable as entities only.

Now, that is the same as the bill last year.

Section 306 requires reports on finances, officers, and membership responsibilities to the members of labor organizations, and an affidavit to the Secretary of Labor, and that that report be mailed to each member.

Senator SMITH. Is that a condition precedent to being qualified as a bargaining agent?

Mr. CASE. Well, that is a condition. This is title 3, it merely sets up the obligation. It does not provide any penalty by the National Labor Relations Board as such.

Section 307 would restrict political contributions by national banks, corporations, and labor organizations. It also adds primaries and conventions to elections.

There are two reasons for this section in the bill, which was not in last year.

One reason is that the restriction carried in the Smith-Connally Act will expire.

The second reason is that a relatively recent decision by the Supreme Court has made primary legislation a subject before the Congress. If it is proper to restrict contributions in elections, that should also apply to primaries and conventions.

Section 308 grants consent of Congress for State action on closed shops. It has the opposition of those sources which say that Congress should not recognize any right of the States to legislate upon that subject as they so desire.

My thought upon that problem is this, that prior to the time we had national prohibition, we had the Webb-Kenyon Act, which recognized State enactments in the handling of the liquor problem.

Last year we passed a bill which sought to divest the insurance business of certain features in order to let the States handle that in their own way.

Now, I do not care to get into a general discussion of the closed shop unless the committee desires that I do that. My provision would not ban it outright. It says that the States can take action, they can legislate regarding the closed shop, and that their legislation will be respected by Congress.

Senar SMITH. I do not see why we need congressional action for approval of State action.

Mr. CASE. Well, I just thought that the action in several States would be attacked on the ground that Congress had not granted that right to them to legislate. I thought that possibly it might be brought up as a question of violation of the Interstate Commerce clause of the Constitution, unless Congress does, as an exercise of that power, say to the States that they might make their regulations and that those regulations will be respected by the Congress.

Section 309 makes mediation and arbitration agreements available for representatives of employees and employers.

Section 310 has the customary separability provisions.

Section 311 is the short title: "Industrial Relations Act of 1947."

Now, I think that we have pretty well covered the major differences between the suggestions I have made and the bills that were passed last year. I will leave those in the statement and would like to have them inserted in the record at this time.

Senator SMITH. Without objection, that may be done.

(The statement referred to by Mr. Case is as follows:)

Four major differences will be noted between H. R. 725 and S. 55, as well as the bill H. R. 4908, which the Congress passed last year, and which was vetoed. We would:

1. Recognize and improve the National Labor Relations Board by—
 - (a) Permitting rules of evidence to be used in its hearings.
 - (b) Requiring substantial evidence for its findings of fact.
 - (c) Granting the Attorney General the power now restricted to the Board of entering complaints against unfair labor practices.
 - (d) Placing the Board on a par with the proposed mediation machinery size, nonpartisan character, salaries and responsibilities.
 - (e) Establishing unfair labor practices for labor organizations or their representatives as well as employers.
2. Permit recognition of independent, nonaffiliated organizations of supervisory employees; in other words permit the type of union offered in the Packard case and denies those of mixed membership proposed in the Jones and Laughlin case.
3. Use the term "Industrial Disputes Commission" instead of another "Board" for the mediation machinery. This differentiates and is more accurately descriptive of functions. A board determines or decides; a commission studies, mediates and leads. In my judgment, also, this agency should be independent and without bias.
4. Make a specific proposal to handle the problem of "the end dispute" if the public welfare is endangered by an actual strike after all attempts at voluntary settlement have failed.

Mr. CASE. It should be noted that the last proposal that I have made is not limited to public utilities, nor to geographic areas, nor to numbers involved.

Also, that the modifications of the Clayton Antitrust and Norris-LaGuardia Acts do not open the door to the use of the injunction by private employers, except as such private employers may use it today.

We should establish, however, beyond judicial doubt, the right of the Government itself to protect the public health and safety when an emergency exists. There is no natural right to conspire against the public welfare and there should be none in law, even in the name of good intentions by a labor organization.

Our efforts, Mr. Chairman, it seems to me, should place the emphasis upon peaceful settlement of disputes by the parties themselves. Our fundamental aim is the achievement of industrial peace, with justice. What we have preached abroad in international relations, we must achieve at home.

Mr. SMITH. Are there any further questions of the witness?

Senator MORSE. I have a question relative to the Interstate Commerce jurisdiction of the States.

As a matter of general policy of Congress, do you or do you not think that there might arise some serious implications if Congress, in fact, delegated this type of legislation to the States, assuming that we could delegate it—I will not go into a legal discussion, but I will say that I have grave doubts about it—assuming that we could delegate it, if Congress did do that, do you think that Congress would be bypassing its own obligations to control interstate commerce?

Mr. CASE. Well, of course, when you do something of that sort, whether or not you use it as a precedent to follow in subsequent questions that arise will naturally depend upon the urgency of the situation.

Now, I think that, beyond doubt, it is a fact that there is a great deal of sentiment in the country for asserting the right of an individual to work or not to work without joining a labor organization.

Senator MORSE. I will go further than that, Mr. Case. I think that if we submitted to a referendum the closed-shop issue, as it is in the bill of Senator Ball, I think that it would be passed. Now, whether or not I think that is the thing to do or whether I think it is legally sound, that is another issue.

However, I do not think that we ought to delegate our power, the power of Congress, simply because certain sections of the country want to pass certain legislation in their own States that they cannot get Congress to pass.

That is the only point I am making.

Mr. CASE. Well, my thought was that there was sufficient demand in the country for dealing with the question to warrant bringing it before the committee that considers this matter, in this way. I offer that simply as one way of approaching the closed-shop issue, without proposing an outright banning.

Senator MORSE. We are greatly indebted to you for this discussion. I wish that more people would approach it in the wholly intellectual way that you did. I hear so much emotionalism connected with this that, even though I disagree with certain of your conclusions, as I might disagree with certain of any man's conclusions, I surely appreciate the way you have approached the problem.

Mr. CASE. Thank you, Senator.

Senator SMITH. We are indeed very grateful to you, Congressman Case, for your testimony.

Mr. CASE. I thank you.

(The following portions of the brief of Mr. Case were not developed fully in the discussion:)

INDEX ANALYSIS OF H. R. 725

DECLARATION OF POLICY

"To establish fair and reasonable regulations for the maintenance of equality in collective bargaining between employers and employees;

"To establish facilities for the mediation, conciliation, or voluntary arbitration of disputes which may arise; and

"To protect the public against the burdening or obstructing of commerce whether resulting from privileges created by Government or resulting from the natural pursuit of self-interest."

TITLE I. ESTABLISHMENT OF RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES— AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT (PP. 2 TO 12)

Section 101: (a) Redefines "employee" in NLRA to exclude individuals whose work has ceased by reason of participation in a jurisdictional or sympathy strike (p. 2).

(b) Permits recognition of foremen's unions if they are restricted to supervisors and are not affiliated with unions not so restricted (pp. 2-3).

Also defines jurisdictional and sympathy strikes (p. 4).

Section 102: Increases National Labor Relations Board to five and makes salaries \$12,000, putting it on a par with Mediation Board proposed last year and Industrial Disputes Commission proposed in this year's bills (H. R. 725 and S. 55) (pp. 4-6).

Section 103: *Industry-wide bargaining.*—(a) Establishes freedom for employer as well as employee to choose representatives in collective bargaining (p. 6).

(b) Requires NLRB to obtain assent of employer when contract involves employees of more than one employer (pp. 6-7).

Section 104: Amends section 8 (2) of NLRA to permit employer to free himself from death sentence for company unions and permits employers to contribute to welfare funds without being an unfair-labor practice for company domination (p. 7).

Section 105: Adds "unfair labor practice" provisions for "representatives of employees" to section 8 of NLRA and establishes freedom of speech for employers if not accompanied by intimidation (pp. 8-10).

Among unfair labor practices:

(1) Coercion of employees.

(2) Violence upon employees.

(3) Seizing or damaging property of employees and blocking of highways.

(4) Withdrawal of essential maintenance employees.

(5) Refusal to bargain collectively when a majority established.

(6) Calling of strikes without majority vote and secret ballot.

Section 106: (a) NLRB to consider wishes of employees in fixing size of bargaining unit (p. 10).

(b) Permits employers as well as employees to request election (pp. 10-11).

Section 107: (a) Gives Attorney General, along with the NLRB, the right which Board alone now has to file complaints for unfair labor practices (p. 11).

(b) Removes requirement that ordinary rules of evidence shall not control in proceedings of the Board (p. 11).

(c) Requires "weight of competent evidence" instead of simple "evidence" for findings of "unfair labor practices" (pp. 11-12).

(d) Requires "substantial evidence" as to facts in court review (p. 12).

Section 108: Affirms protection of right to strike, peaceful assembly, and peaceful picketing, and prohibition against involuntary servitude. (Note: Typographic error; change "Section 12" to "Section 13" in reference here.)

TITLE II. ADJUSTMENT OF DISPUTES; ESTABLISHMENT OF FACILITIES FOR MEDIATION

Section 201: Objectives to encourage voluntary settlement of disputes.

Section 202: (a) Definitions for this title (pp. 13-15). Essentially same as NLRA.

(b) Exemption of things within purview of Railway Labor Act (pp. 14-15).

Section 203: (a) Obligation of employers and employees to make and maintain agreements; arrange conferences promptly; cooperate with Commission in seeking settlement.

(b) Maintain status quo for 60 days if necessary during mediation (p. 16).

(c) Employers may be restrained for violation of status quo as "unfair labor practice."

(d) Employees lose status of employee for violation "provided that such loss of employee status for such employee shall terminate if and when he is reemployed by such employer" (p. 17).

(e) Limits penalties as described and protects individual's right to quit (p. 17).

Section 204: (a-g) Creates independent mediation agency as Industrial Disputes Commission of five members, appointed by the President and confirmed by the Senate (p. 18-20).

(h) Transfers functions of Conciliation Service from Department of Labor (pp. 20-21).

Section 205: (a-b) Commission's duty to foster employers and employee settlements (pp. 21-22).

(c) Requires proposal for voluntary arbitration, binding if agreed to in writing by both parties; provides for panel of arbitrators and selection by Court of Appeals for District of Columbia if parties unable to agree upon public members (pp. 22-24).

(d) Emphasizes desirability of voluntary and mutual agreements.

(e) Availability of data on methods and means of settlements (p. 25).

Section 206: When disputes threaten substantial interruption of essential service, Commission reports the matter to the President (pp. 25-26).

TITLE III. DISPUTES AFFECTING THE PUBLIC WELFARE, PROBLEMS OF MONOPOLY, AND GENERAL PROVISIONS

Section 301: (a) Authorizes President to create an emergency commission when he finds that "public welfare, public health, or public safety" are endangered, this emergency commission to be appointed without prejudice or bias by United States Court of Appeals for District of Columbia, which is an administrative court and for which Congress can legislate directly (pp. 26-27).

Commission reports within 30 days, recommends on wages, hours, and working conditions only, but may describe other issues. Report to be public.

(b) Report of emergency commission binding if mutually accepted; if employee representatives refuse, employees may ballot secretly, and, if they accept, recommendations binding on both parties for 6 months (pp. 27-28).

(c) Commission dissolves and records to IDC (p. 28).

(d) Status quo obligations continue during period plus 5 days (p. 29).

Section 302: (a) Certain proceedings of Attorney General of United States exempted from specified portions of Clayton Antimonopoly Act, as herein amended (p. 29).

(b) Amends Clayton Act to make acts of labor organizations restrainable by the Attorney General if—

(1) Strike in "an essential or monopolized service or industry" actually "burdens or obstructs commerce in such a way as to endanger the public welfare, health, or safety" after the President has taken emergency action (p. 30).

(NOTE.—insert "or" to make it read "essential or monopolized service.")

(2) Secondary boycotts and jurisdictional strikes.

(3) Combinations to fix prices, allocate customers, etc. (p. 31).

(c) Exempts such actions by Attorney General from Norris-LaGuardia Act (pp. 31-32).

Section 303: Makes labor organization liable to loss of bargaining recognition for 2 years and suit for civil damages in case of sympathy strikes (p. 32).

Section 304: (a) (b) Jurisdictional strikes, same liability as in 303 (p. 33).

(c) Proposes declaratory judgments in jurisdictional disputes (p. 34).

Section 305: Establishes equal responsibility and liability for employers and labor organizations; makes unions suable as entity only (pp. 34-35).

Section 306: Requires reports on finances, officers, and membership responsibilities to the members of labor organizations; affidavit to Secretary of Labor (p. 35-36).

Section 307: Restricts political contributions by national banks, corporations, and labor organizations; adds primaries and conventions to elections (pp. 36-37).

Section 308: Grants consent of Congress for State action on closed shops. p. 37).

Section 309: Makes mediation and arbitration agreements available for representatives of employees and employers (pp. 38).

Section 310. Separability provisions (pp. 38-39).

Section 311: Short title: "Industrial Relations Act of 1947."

STATEMENT OF EARL F. REED, THORP, BOSTWICK, REED & ARMSTRONG, PITTSBURGH, PA.

Senator SMITH. Mr. Reed, you may proceed.

Mr. REED. My name is Earl F. Reed. I am a member of the law firm of Thorp, Bostwick, Reed & Armstrong, of Pittsburgh, Pa. Our firm has represented a great many employers of labor in the Pittsburgh district and has appeared many times before the National Labor Relations Board and similar predecessor agencies. We have also handled many cases involving the National Labor Relations Act before several circuit courts of appeal and the Supreme Court.

I was attorney for the employer in the first representation case tried by the National Labor Relations Board, in which Mr. Madden, then chairman, personally presided, and I was counsel for the losing party in the Jones & Laughlin case, in which the constitutionality of the act was sustained by the Supreme Court.

A great deal of my time in the last 13 years has been spent on labor matters before various administrative agencies and reviewing courts. I have very firm convictions about certain changes that ought to be made in the National Labor Relations Act. I am not one of those who thinks that the act should be repealed, but I do think it requires radical changes to equalize the position of employers and employees in industrial conflicts, some of which I regard as inevitable in any free enterprise society. Most of the proposed amendments have been carefully considered by others who have appeared before your committee. I think Mr. Iserman made a very thorough analysis of some of the glaring defects of labor legislation as it now exists, and for that reason I do not propose to go over the many suggestions that have been made. I would like to confine my remarks to two points, one involving an amendment which does not seem to have been suggested by anyone, and another which I think was not extensively dwelt upon.

I refer, first, to the matter of the Labor Board's policy of exterminating independent unions, and, second, to the Board's practice of requiring the reinstatement of strikers long after a strike is actually over, even though the strike is not the result of an unfair labor practice.

The National Labor Relations Board, from its very inception, took a hostile attitude toward independent unions. In its first representa-

tion case, Chairman Madden frankly stated his belief that independent unions could not accomplish anything for their members and, following this pattern, the Board's decisions have been almost uniformly against independent unions. The Board has seized upon the very slightest evidence to find that the employer has given encouragement or assistance to a union if it happens to be an independent union. If an employer has allowed a union to use a mimeograph machine for the preparation of its notices (Norfolk Shipbuilding & Dry Dock Corp., 12 NLRB 886 (1939)), or to use a room on the company premises to hold one meeting (Revere Copper & Brass, Inc., 16 NLRB 437 (1939)), such minor conveniences have been magnified by the Labor Board into proof of company unionism, and although the Board has no jurisdiction over the union as such, it has accomplished its destruction by ordering the employer to "disestablish the union" and forbidding him to have any dealings with it.

Many of the trivial conveniences which the Board has always condemned have curiously enough become standard contractual demands of international organizations, such as the use of bulletin boards, plant concessions, and the like. As a matter of fact, many unions today enjoy, with impunity, substantial financial and other aids, such as pay for union stewards, superseniority for union officials, and the like, which the Board would hold to be a high crime in the case of an independent union. But any aid, great or small, is always sufficient grounds for obliterating an independent union, so far as the Board is concerned, and it is never of any consequence to the Board that the employees may actually want the union.

As pointed out in previous statements, conduct favoring a union affiliated with the large unions—CIO or AFL—has not been considered a violation of the act requiring the disestablishment of the union. On the other hand, the slightest expression of opinion on the part of an employer, indicating that he favored an independent union, has been eagerly pointed up by the Board as a ground for the disestablishment of such a union, and most of the early cases of the Board show that it at once concentrated its efforts to exterminate independent unions throughout the country. This activity has contributed in a large measure to the gigantic labor monopolies now existing which have had such a bad effect upon the economy of the country. The theory of the Labor Board in deciding these cases has been that the slightest nod of approval on the part of the employer has the effect of coercing or intimidating his employees into joining the union so favored. The courts have not always seen eye to eye with the Board on these matters and have indicated a more realistic approach, but they have been powerless to act because wherever there is the slightest evidence to support the Board's findings, the courts are strait-jacketed into approval.

Whatever may have been the situation in 1935, there is no worker in the country today who does not thoroughly know his legal rights to join or not to join a union. There is no longer any need for sealing the lips of an employer about union matters as long as he confines himself to comment and does not indulge in pressure or intimidation. If the employees want an independent union today, it is not because

they are uninformed of their rights and it is not because of any wink or nod of the employer indicating his desire.

I want to mention one client by name because its labor affairs are pretty well known throughout the country. I refer to the Weirton Steel Co. Even before the Wagner Act was passed, the Government had conducted long litigation in Delaware to stamp out an employee-representation plan which existed at Weirton. The Government was unsuccessful in its suit, the court holding that although the company had participated in the formation of the organization, it did not dominate it or control it.

Shortly after the Wagner Act was passed the Labor Board began another proceeding to wipe out the independent union at Weirton. After long months of hearings it issued an order disestablishing two existing local organizations, including the representation plan which had been in existence then for a number of years. Even before this dissolution order a new independent union was forming in Weirton and the Labor Board soon began a proceeding to stamp out that organization, claiming that it was a descendant of the earlier organization which it had found to be company-inspired and dominated.

I have no desire to present the facts of these cases here, as they are still before the courts, but I do want to make some observations about them.

In the last 13 years Weirton Steel Co. has been in court at the suit of the Government or the Labor Board a total of 137 month, at a terrific cost.

The Labor Board has tried in every way to wipe out the independent union existing at Weirton, even to installing Board representatives in the CIO union headquarters to coach paid CIO organizers as to the methods they should use to get on the company pay roll in the company's shell plant. This, during the war, before the tide of victory had turned in our favor.

Furthermore, Board representatives attended secret conferences at which CIO leaders paid bribes to officers of the independent union to induce them to betray it by going over to the CIO, while at the same time holding their offices in the independent union. This was done by an agency which is supposed to protect the free and undeceived choice of employees. In spite of these tactics, the Weirton independent union, which is an incorporated organization, represents about 90 percent of the employees and has carried on negotiations with the company, resulting in contracts which are generally better than any existing in the steel industry.

During that time Weirton has not lost 1 hour's work or 1 ton of steel on account of labor trouble. During the war Weirton accomplished production records that were eulogized by the Army and Navy Departments, and attained an efficiency in the production of difficult war materials which won it unstinted commendation. The rapid changes required to perform this work gave rise to numerous labor difficulties, all of which were ironed out by collective bargaining between the company and the independent union.

Now, it seems inconceivable that any group of 10,000 employees which has consistently maintained independent organizations over

such a period of time, with such successful results, could be doing so because the men were forced into the organization.

While all this litigation has been going on there have been two occasions in which the CIO asked the Labor Board for an election, and in each of them the election was refused. On the last occasion, about a year and a half ago, the independent union joined in the CIO's request for an election, and the company also asked for an election, but the CIO later withdrew its petition and the Labor Board denied the election. If the Labor Board had any real intention of ascertaining the wishes of the employees it could conduct an election among them; instead, it has chosen to carry on this litigation over all the years in its determined effort to wipe out the strongest independent union in the basic steel industry.

The position of the Board is made perfectly clear in the line of cases in which it has ordered the disestablishment of independent unions on the ground that some predecessor union was company dominated. In some of these cases, the Board has had no more to support its findings than the speculative theory that since there once was a dominated union, the employees are so cowed that they couldn't choose a new union until the CIO or AFL comes along. Yet in all these cases, the Board had, but refused to use, perfect machinery for testing its theory that employees are so childlike in their fears; that is, a secret election.

Congress intended the Board to use its orders in a remedial way; to redress wrongs against employees. It is alarming to find, therefore, that the Board in its unrelenting attack against independent unions has been punishing employees by depriving them of their right to belong to a union of their own choice on the pretext that their employer had failed to personally notify them that he would abide by the law—John A. Roebling's Sons Co. (17 N. L. R. B. 482 (1939)). That the employer's failure to so notify the employees was the most brazen of pretexts is proven by the fact that in a number of cases where employers have given such a notice, the Board has, nevertheless, stated that the notice was unimportant and ordered the disestablishment of independent unions because of some real or imagined employers domination of predecessor unions. For example, *National Labor Relations Board v. Continental Oil Company* (121 F. 2d 120).

Senator ELLENDER. Mr. Reed, does that union at Weirton operate now?

Mr. REED. Yes, it has been all these years. Of course, it is a different one now than in the beginning. They claim it is a successor to the earlier organization.

There was never any denial that, in the beginning, with regard to employee representation plans, before there was any Wagner Act, that the company assisted in such plans.

Senator ELLENDER. As I understand it, it was dissolved and recreated by its members, and it became another organization.

Mr. REED. The existing organization had begun when the opposition organization commenced, and it took over.

Senator MURRAY. Mr. Reed, at the time that this agitation was going on with reference to the company union at the Weirton plant,

was it not the subject of extensive investigation by the La Follette committee of the Congress?

Mr. REED. I think that they had some investigation down there, but I do not think it was what you would call a major investigation.

Senator MURRAY. They investigated at that time the action of the corporation in its efforts to have this company union set up. I will read from the La Follette committee report.

Records of the La Follette committee show that Weirton Steel Co. spent \$23,867.71 for industrial munitions, investigation, and espionage from 1933 to 1936. Their labor spies were hired through the Railway Audit & Inspection Co., Inc., and the Central Industrial Service. It exchanged its labor spy information with Republic Steel Corp. From 1933 to 1937 National Steel Co. purchased tear gas and gas equipment to the value of \$12,085.37. The bulk of this equipment was purchased from Federal Laboratories, Inc., of which Roy G. Bostwick of the law firm of Thorpe, Bostwick, Reed & Armstrong is a director. Federal Laboratories ordered 18 .38 caliber pistols for the Weirton Steel Co.

Mr. REED. Well, there was some testimony on that; yes. I believe that the charge was that the company had not done anything to stop the employees from keeping agitators out, and so on.

Senator MURRAY. That excerpt is from the La Follette report, part 15-D, pages 7044 and 7045.

So it would appear that there was a very long, drawn-out battle there with reference to the efforts to setup this company union.

Mr. REED. Well, yes; however, the purchase of tear gas had nothing to do with the installation of that union. I do not have very much respect for the investigators of the La Follette committee, I might say.

Also, the circuit court that heard this case reversed the finding of any labor espionage at all; it entirely acquitted the company of labor espionage.

Senator MURRAY. Well, there are still cases pending in court in connection with this?

Mr. REED. Yes; there are still cases. They are still trying to disestablish the Weirton union. As I said, for more than 100 months in the last years we have been in court.

Now, in spite of all that, the organization is functioning and there is no trouble or any strikes.

My contention is that if there was any real dissatisfaction, the Board had an easy way of finding that out, by conducting an investigation, instead of harassing the company all through these years.

Senator MURRAY. Well, the National Labor Relations Board did not carry on these proceedings.

Mr. REED. Oh, yes.

Senator MURRAY. It was the courts.

Mr. REED. They brought them into the court, they were the ones who were the prosecutors.

Senator MURRAY. And those cases are still pending?

Mr. REED. Yes; in the Third Circuit Court.

Senator SMITH. You may proceed.

Mr. REED. The evil requires positive action on the part of Congress for correction. Its roots are deep and have the approval of the Supreme Court in a case where a successor organization, admittedly the

overwhelming choice of the employees, was disestablished because of facts occurring years before and in spite of the efforts of the employees to put the successor in full compliance with the law. *National Labor Relations Board v. Newport News Shipbuilding and Dry Dock Company* (308 U. S. 241, 60 S. Ct. 203 (1939)).

Even where the Board is forced to admit that an independent union is not company dominated, it has, nevertheless, continued its efforts to nullify the free choice of employees when the choice runs counter to the Board's desires by setting aside contracts negotiated by independent unions with employers. A recent and glaring example appears in the case of Scullin Steel Company (65 N. L. R. B. 219), decided less than 1 year ago. In that case an independent union had been formed which was not a successor to an allegedly company-dominated union and was itself not company dominated. The employer in that case had on two different occasions, more than a year apart, notified its employees of its policy of noninterference. The company did not even recognize the independent union until after the Labor Board had actually certified the independent union as the representative of the employees. Nevertheless, in 1946, the Board relied upon evidence concerning the conduct of certain supervisory employees in 1943 and 1944 as the justification for declaring invalid a contract entered into between the independent union and the company in 1945.

The workers are entirely competent to decide whether they wish to belong to a union that is Nation-wide, whose policies are dictated by national leaders, or whether they desire to run their own affairs. They have a right to decline to contribute their money to a national labor monopoly, often embarking on economic and political expeditions of which they do not approve.

The suggestion contained in Senator Ball's bill, S. 360, forbidding the Board to discriminate between independent unions and affiliated unions in election proceedings, does not seem to me to go far enough, because I know from experience how adept the Board is in selecting some ridiculous piece of evidence to support its action, which the courts, because of the limitations of the act, cannot reverse. I think that the best remedy would be a statute of limitations on charges of union domination. What difference does it make if the independent union was blessed by the employer years ago, or if it is a theoretical descendant of a dominated union? If it is still the choice of the workers, it ought to be entitled to function. It is ridiculous to say that because it has officers who were connected with some earlier so-called dominated union, it is therefore to be condemned. There are natural leaders among the men who would rise to leadership in any union and it is quite to be expected that you would find some identity of leadership between a new independent union and a former independent union. I think section 8 (2) of the National Labor Relations Act should be amended by adding the following proviso:

Provided, further, That the Board shall not refuse to entertain a petition for investigation and certification of representatives by a labor organization because of acts committed more than one year before the filing of such petition, or refuse to permit a labor organization to participate in an election because of acts committed more than one year before the date of the election: *And provided further,* That the Board shall not issue any complaint alleging violations of this section based upon acts committed more than one year before the date of such complaint.

It may be urged that most of the damage has been done; that the policy of the Labor Board over the years has extinguished most independent unions. That is true, but it is largely because employees wanting independent unions have become convinced by the record of the Labor Board that it would not let any such organization survive, no matter how much it has accomplished for the employees and no matter how much they want to have it. However, the Board has not let up on its campaign against independent unions and during 1946 issued many orders disestablishing such groups, in one case going back as far as 1937 to find evidence of company domination. *Tappan Stove Company* (66 N. L. R. B. 100 (decided Mar. 15, 1946).)

I am sure that many independent unions would come into existence if the Labor Board were forced to change its policy and practice respecting their rights, and this would accomplish a salutary diminution of the excessive power now exercised by national labor organizations.

It would have an additional good effect on the workingmen of the country. Many of these men have had no experience in court, have had no contact with American justice other than the performances of the Labor Board which they have seen and which touched their lives greatly. Imagine the reaction of the men at Weirton when they learned that an agent of their own Government sat by while a CIO organizer bribed their own stewards to deceive and betray them. The long period of biased and prejudiced action by the Labor Board has undermined the confidence of many workingmen in American justice. The workers look upon the Labor Board as an organizing agency of the CIO, and rightfully so.

The Labor Board has compelled many thousands of workers to go into national unions when their preference was for independent unions, and it is time that the Wagner Act was changed to rehabilitate the faith of the workingmen in our system of law and justice.

The second matter I would like to discuss relates to the phrase "current labor dispute," which appears in the act, as it bears upon the Labor Board's authority to restore striking employees to their former jobs. This phrase, apparently innocuous in the original act, has been distorted by the Labor Board to the place where any striker is practically certain to get his job back, whether the strike succeeds or whether it fails.

The congressional discussions of the Wagner Act before its passage represented that the Board's authority in strike matters would be limited to organizational strikes, or strikes resulting from the unfair labor practices of employers. I think it was never contemplated that the Labor Board would have any jurisdiction over strikes involving only a test of economic strength between a union and an employer, and the Board itself has recently taken this position by making the claim to Congress that it cannot be blamed for the recent wave of strikes because its function is limited to the alleviation of recognition strikes.

But by its decisions interpreting the word "current," as used in the definition of "employee," the Labor Board has actually encouraged strikes in no way involving unfair labor practices or organizational activities.

When the National Labor Relations Act was passed, Congress stated its belief that the act would serve to prevent strikes because, (1) it would eliminate strikes resulting from unfair labor practices on the part of employers; and (2) it would substitute for the strike, as a method for compelling recognition, the orderly procedure of an election. If the act had been properly interpreted, it would have achieved both of these ends and nothing more. The fact of the matter, however, is that while the act may have served to reduce the number of strikes resulting from unfair labor practices and disputes as to recognition, it has actually encouraged strikes on other grounds.

This can be illustrated by an example. Suppose that a strike is called, as they frequently are, over some petty grievance in which only a fraction of the men are interested. Assume, too, that the strike is unpopular with the men, as many of them are, but the union leaders and a few others wish to continue it to the bitter end.

Before the National Labor Relations Act, a strike such as this was regarded as a test of economic strength to be settled by economic pressures. If the strike was popular and supported by the men, they could be induced to stay away by picketing and peaceful persuasion. On the other hand, if the strike was unpopular, the employer could win it because men will not sacrifice their wages for very long in an unpopular dispute.

Today, however, we have several factors which make it almost impossible for the employer or anyone else, including the Government, to appeal to the men who do not favor the strike. Peaceful picketing has been replaced by violence and the employer is practically foreclosed from taking any action against unlawful picketing because of the anti-injunction acts and because of lax police enforcement. At the same time, in a great many States, the pressure of the loss of wages is no longer available because after a few weeks unemployment compensation can be drawn.

The National Labor Relations Act, as interpreted by the Board, completes the stone wall which has been erected around the employer's freedom of action. The union can be as arbitrary as it likes with the employer because it is under no compulsion to bargain. The employer, on the other hand, must stand ready to meet with the union at all times, no matter how arbitrary it may be, or he will be accused of a refusal to bargain. Moreover, and this is the feature that I am complaining about, the Board regards the dispute as still current until the employer has rehired a full pay roll, which may take a year or more, and until the pay roll is complete any person on strike retains the right to reinstatement. In addition, the employer has no choice as to the strikers whom he may rehire to complete his pay roll because there can always be a claim of discrimination. The net result of this combination of circumstances is that the leaders and active support of an unpopular strike can sit back and wait forever because, in most States, they can draw compensation and in all States they can take temporary jobs, with the assurance that until the last man is hired they can get their jobs back.

Some people urge, of course, that the strike as a test of economic strength should be abolished or curtailed and that labor disputes

should be settled by other means. Arguments of persuasive effect can be advanced on both sides of this controversy, but I am not taking any position on it.

My position amounts to this—that if we are going to continue to recognize the strike as a proper test of economic strength, then we should permit both sides to use their respective economic weapons legitimately but to the fullest extent. This is not done where the strikers are allowed to use all of their economic and political strength, secure in the knowledge that if these weapons fail they can deprive the employer of his limited economic pressures.

I am not talking about strikes that result from an unfair labor practice by the employer. In such cases the employee's right to his job should be preserved, because the employer, and not the employees or their union, has forced the strike. I am talking now about strikes to test the economic power of the employer and the employee. The number of strikes has increased enormously since the passage of the Wagner Act, as has been pointed out by previous witnesses. One of the principal reasons for this increase, in my opinion, is that union members have everything to gain, no matter how trivial it may be, and nothing to lose, by striking. Before the act was passed, a union contemplating a strike for higher wages or better working conditions, or even a trivial grievance, had to count the cost.

Senator MORSE. Mr. Reed, don't you think it is true that the steelworkers lost an awful lot in the strike?

Mr. REED. I think they did; yes. They lost a lot.

Senator MORSE. I wondered about that, in connection with your statement that "union members have everything to gain, no matter how trivial it may be, and nothing to lose, by striking."

I think that they have lost much more than they have gained.

Mr. REED. I am not talking so much about an industry-wide strike as I am of an individual employer's situation. The men are absolutely certain to get their jobs back and in most States they get compensation, and the normal weapons that the employers formerly had, that they could always use in the past in a labor controversy, those weapons are practically gone.

Senator MORSE. You would deny, if they struck, you would deny them any further rights under the Wagner Act?

Mr. REED. No. I state that after a limited time, the Board ought to have no power to keep the strikes running. There ought to be a cut-off date. If things are not settled at that date, then the employer should be free to hire anybody he wants, and he should not be under any obligation to deal with the striking employees.

I suggest that a little later in my paper.

Senator MORSE. Pardon the interruption.

Mr. REED. The employer might succeed in hiring new employees to take the place of the strikers. The leaders of the strike might find themselves without jobs if the strike failed.

It may seem callous to urge that these possibilities should be retained, but the plain truth of the matter is that if strikes are recognized as serious steps, to the men who participate, as well as to the employer, they will find that the weapon will be limited to serious

issues and will not be used when a few people want to go hunting or don't want to work with the man on the next machine.

Unions today are unanimous in holding that the right to strike is sacred and must not be tampered with; I have known cases where they have refused to agree to the arbitration of grievances because it might diminish this right.

Within limits, their argument is probably correct, but if they insist upon the right to strike, they should accept the consequences of striking.

The strike should be a weapon of the employees themselves and not a racket for the union, and the best way to achieve this is to make the employees realize that it is their instrument and their responsibility. The normal weapons of an employer in combating a strike were practically taken away from him upon the passage of the Wagner Act. The Board holds it to be an unfair labor practice to transfer production to another plant or to move a plant to another city.

Until the employer is able to completely replace all the employees, the Labor Board regards the strike as current and restores the striker to his position. This means that unless an employer can get a complete new crew, he has no chance to break the strike.

The natural economic weapons that he would use in such a contest are taken away from him because prospective employees soon learn that if they go to an employer whose men are out on strike they will be displaced by the Labor Board and the old employees restored to their jobs.

Anyone whom the employer refuses to rehire because of his striking will get back wages from the time the plant reopens. If the employer is willing to reinstate some but not all of the employees, he will be held liable to all of them for wages.

The situation is like a prize fight in which one of the contestants has his hands tied behind his back; the other contestant may slug him at will. The unions call strikes in the full knowledge that no one will lose his job as a result of it and that the employer is helpless to replace the employees who are out on strike.

True, the failure of local authorities to furnish police protection has been one factor in depriving the employer of his natural weapons in any economic struggle, but this failure is in large part attributable to the general belief throughout the country that it was the policy of the Government and the Labor Board to assist strikers, whether their cause is just and reasonable or not.

In time that attitude on the part of the public and the police authorities would change if the governmental policy were changed. The long continuance of a governmental policy favorable to strikers, whatever the cause of the strike, has resulted in many workers honestly believing that they have a right to seize the employer's property and deny him access to it.

I have examined witnesses on the stand who asserted—I believe with perfect honesty—that they believed it to be the right, and, in fact, the duty of pickets to deny access to the plant not only to fellow workers, but to anyone, and to enforce their quarantine by violence. Such a belief on the part of the workingman results from the long-continued partiality of the Government in labor controversies.

A classic example of the situation that I am discussing occurred in the case of Kokomo Sanitary Pottery Corp., 26 NLRB 1 (1940), where the Board held that a strike which was neither caused nor prolonged by any unfair labor practice was still current more than 18 months after it began. The strike in that case was a true example of the so-called economic strike and after a 1-month shut-down the employer was able to reopen and gradually resumed full production.

The union maintained a picket line for a while but even a year after the picketing ceased, the Board said that the strike was still a current labor dispute because the employer met from time to time with a committee representing the strikers.

The ultimate ruling in that case on August 1, 1940, required the employer to reinstate a substantial number of men whom the company had not rehired during the period while the plant was being restaffed. Such reinstatement carried with it substantial amounts of back pay and was ordered even though it required the dismissal of persons employed nearly 4 years prior to the Board's decision.

The employer is wrong whatever he does. If he negotiates with the strikers the Board says the strike is still current. If he refuses to negotiate with them, the Board says he committed an unfair labor practice.

Senator SMITH. Mr. Reed, it is a little after 12 o'clock. We planned to adjourn around 12 o'clock. We have another witness who is waiting. Are there any further points in your brief that you want to emphasize, or can we file the remainder of it?

Mr. REED. Well, it may be filed, except that I would like to answer Senator Morse's question that he raised a while back, as to what I thought the remedy was.

Senator SMITH. Before you go ahead, I just want to ask one thing about this slugging matter that you refer to in your statement. I wonder if that is going to continue indefinitely?

I am terribly interested in concluding this antagonism which seems to have been growing worse and worse as time passes.

I wonder whether you think we have to have this sort of thing.

Mr. REED. Senator, the reason we have so many is that the employer is so helpless. If the union calls a strike, it can lose nothing; and the employer can do nothing.

I think that if the unions are restricted and if the employers are restored to their former position, that we will have less of this battling that is going on.

I think that if the position of the employer was stronger when it came to bargaining power, then I think that it would work itself out. On the other hand, I do not think that there is any quick and sudden remedy, I do not think that there is any action possible or any congressional act which would stop that condition right away.

However, I think that the employer should be on a more nearly equal basis; if that is done, then there will still be contests, but not so many of them, I think.

My suggestion—I need not go through it all—is that the Board ought to have no power after a period of 60 days to treat a strike as current. If the men have gone out in an economic struggle, if it is

not an organizational drive, if it is not an unfair labor practice, if they are just asking for shorter hours, or more wages, and if that contest continues for 60 days, then I think that it should no longer be deemed a current dispute.

Then I think that the employer ought to be free to restaff his plant, he ought to be free to say, "I do not have to deal with you any more; the strike is over."

The men should not expect to be restored to their jobs when the strike is over.

Now, that will have this effect: He can then get employees if they are sure, as I stated, that somebody else will not get their places when the strike is over. In other words, there will be a deadline approaching, when it is necessary to settle the matter, and, after the end of the 60-day period, then they will know, "This is the end; we will be out if we are not finished—if we do not settle this in 60 days."

Also, the employer will know that, and it will enable him to deal with the situation within that time.

At the very least the strike will not go on, and the condition will not arise where, a year and a half later, a worker can demand his job back and get it back—that sort of thing just takes away every weapon that the employer has.

Senator SMITH. Well, Mr. Reed, it seems to me that the reason for that rule is that if we had the rule you suggest the employer would win all of the time, or practically all of the time, because all he would have to do would be to wait.

Mr. REED. Well, isn't he entitled to win an economic contest?

Senator SMITH. I will not go into that; I mean that is an argument.

Mr. REED. I think it is a different thing entirely if he has done something unfair, if he has not recognized the wrong union, or something of that nature. If it is an unfair labor practice, that is one thing.

But when the employee says that he is just going to have a struggle because there is nothing he can lose and he might win, why, that is the kind of position I am talking about. There ought to be a time when the employer is free not to recognize such a strike.

Then I think that the employees would be more careful about calling strikes.

Senator SMITH. That brings out my feeling that there is a necessity for handling this matter. There should be some way to decide these things other than by the method of slugging. There should be some other way than by battling each other to see who can slug the longest and the hardest. I think that is the wrong tack in this whole business.

Mr. REED. Well, unless you are willing to abolish strikes—

Senator SMITH. I grant you that that is part of the picture, but I think that we are going to get into increasing tensions and more and more class consciousness and battle consciousness when we ought to be thinking of making the people happy and not having this constant turmoil—the way we are now having these antagonisms.

We should be thinking of how we can improve the situation so that the men could enjoy their work and they could have the satisfaction of feeling that they are a part of the company they are working for.

To be specific, I am wondering what the Weirton Co. does. Do you

have welfare funds, and so on, for your employees? Do you take care of those things so that the families of the workers and the workers are pretty well satisfied?

Mr. REED. It seems to me that they are. Of course, we do have controversies with them. The independent union is always arguing with us, but we have had no work interruptions of any kind.

Senator SMITH. That is what I understand. I am interested in this set-up and I wondered how you handled the families—that sort of problem of your people—the problems of your workers, their environment, the education of their children—all of those things that are so important to the people who are working.

Mr. REED. I think that the Weirton people as a whole have all of the major advantages that any other steel company has. They have had other advantages that no other steel company can claim. They have had very steady work.

Now, they are extremely loyal to this independent organization. The outside unions just cannot get any following at all. Now, there must be a reason for that when it has been going on for years and years and years.

My point is, why has the Government persisted in trying to kill it off?

Senator SMITH. I think that your point is very well taken, and I am glad to get it into the record, because I think that it makes a very good argument for the independent union.

Senator ELLENDER. Mr. Reed, instead of this 60-day proposal that you mention, have you given any thought to the idea that if any of these employees should receive compensation or employment from any other sources that they should then not be permitted to be re-employed, or some restriction along that line?

Mr. REED. That might help, from the employee's standpoint, but that does not give the employer anything to fight with.

Senator ELLENDER. Yes; but if the employees know in advance that they cannot work or secure employment, then they might think a long while before deciding to strike.

Mr. REED. Well, it might be helpful, but the thing I am saying is that everything has been taken away from the employer that he used to have in an economic struggle, he cannot do anything; he is just helpless.

If you make it possible for both sides to have some weapons, then I think you will reduce the number of strikes, unless you are willing to go to compulsory arbitration.

Senator MORSE. Do you favor compulsory arbitration?

Mr. REED. No; I do not. I think it works both ways. I think you have to give the employer his weapons, as well as give weapons to the unions.

Senator SMITH. How would you deal with national paralysis cases that were discussed earlier with Mr. Case?

Mr. REED. I think that several remedies have been suggested that would be very helpful, and there might be a situation where the Government simply has to step in.

Now, I do not see anything to this matter of industry-wide bargaining. It seems to me that if you prohibit industry-wide bargain-

ing, you will only have simultaneous demands from every local union which would be identical.

Senator SMITH. In other words, you are just saying that it would not be practical?

Mr. REED. That is right; not practical.

Senator SMITH. I am just trying to find out your views. Then, you do not think that Senator Ball's bill limiting the area of bargaining would be practical?

Mr. REED. No; I do not think it would be practical. Furthermore, I think that if there is something wrong with, say, the automobile industry, then let them all go in together and settle it; straighten it out.

I mean, you had the same situation with the Philadelphia newspapers. There were identical demands which were to be made upon the newspapers and they picked out the paper that they felt would not stand for it—well, they put it out of business.

Now, I think they would have been better off, everybody, if they had simultaneous demands.

I mean—well, let me put it this way, that I do not see why industry wants to avoid industry-wide bargaining. I think that we would be nearer a solution of problems if it is a case of an industry problem, if it were presented at one time, instead of having it scattered.

Senator SMITH. Of course, in industry-wide bargaining there is more danger of national paralysis, is there not?

Mr. REED. That is right.

Senator SMITH. I refer particularly to coal, steel, such industries. In such cases, sometimes it seems that the Government has to do something.

Senator MORSE. Would you care to discuss the Big Steel negotiations?

Mr. REED. Well, Weirton Steel is a subsidiary of the National Steel Corp. and it has the Great Lakes Steel-Corp., and others who are in it.

So, we are in the anomalous situation of having CIO contracts in Detroit, Buffalo, and Cleveland; and an independent union to deal with at Weirton. The result is that we have to match all of them, really, and you might say that we get the worst of it, as far as economics is concerned.

Senator MORSE. Yesterday we had some testimony from representatives of the so-called nonbasic steel-fabricating industry, who pointed out that they are bound by the negotiations in Big Steel.

Mr. REED. That is right.

Senator MORSE. They are bound by what was consummated in those negotiations concerning Big Steel, although they themselves are not a party to the negotiations.

Mr. REED. That is right.

Senator MORSE. Do you agree that we can avoid such a situation if we have industry-wide bargaining?

Mr. REED. Well, I think that it is almost unavoidable in the Big Steel picture, because of the dominance of the big companies, the other companies have to follow the pattern established by the big companies.

But I think that an employer should be free to tell his employees—and they are not free in that situation. There are a great many fabricating plants in the suburbs of Pittsburgh, for instance, which located there because living was cheaper and wages were lower. That was the only way that they could get along.

Now, if that employer could say to his employees, "I cannot pay what you demand. We are living here, we have set up business here, and we have put this plant a way out here because we cannot afford the standard wages and we thought that you could live just as well out here on our lower wages. We could not afford to operate if we have to pay that standard wage."

I believe that they should be permitted to say such things without being accused of interference.

Senator MORSE. I have one suggestion, Mr. Chairman, that I should like to make to this committee.

Senator SMITH. Certainly.

Senator MORSE. Mr. Reed has, I think, made some specific charges against the National Labor Relations Board, more specific charges than any other witness I have heard, and certainly, I think, he has made very serious charges.

Now, we are dealing here, as a committee, with the problem of amending the Wagner Act. I, for one, as a member of this committee, wish to say to the chairman of this committee, that it is my wish that this testimony of Mr. Reed be served upon the Chairman of the National Labor Relations Board.

Furthermore, I wish that he might be requested to reply to that testimony in a memorandum and that he should, if this committee desires, come in at a later date and give his testimony.

I make that request, Mr. Chairman, simply because I want to know what the facts are, I want to know both sides of the story.

I want the people in the National Labor Relations Board to know that there are always two sides to every controversy and I would like to know what the National Labor Relations Board has to say about these very serious charges, and I would like to have what information they can give upon this situation at Weirton.

Senator ELLENDER. Well, we have been hearing such charges for the past 10 years.

Mr. REED. Yes; I have told the Board themselves.

Senator ELLENDER. However, I think that Senator Morse's suggestion is entirely in order, and I believe that we should see that they get a copy of this statement by Mr. Reed.

Mr. REED. Of course, in justice, I should say that some of the members of that Board which are responsible for the past activities are not any longer on the Board; but they are still carrying on the case.

Senator ELLENDER. Of course, that would be one of the difficulties in answering such charges, these personnel changes. They do change membership. One of them is in the Court of Claims here.

Senator MORSE. I am just asking that they be made aware of what has been said and that they be given this statement, and I would like to know what the records of the Board will show from the Board's standpoint on this Weirton situation.

Senator SMITH. I think that they might want to know the attitude of the independent unions upon this and I think they ought to know about it.

We are very glad to have heard your testimony, Mr. Reed.

Mr. REED. Thank you.

(Portion of prepared statement of Mr. Reed not read is as follows:)

In another case which reached the Circuit Court of Appeals for the Second Circuit, the workmen involved had engaged in a test of economic strength by striking prior to any unfair labor practice on the part of the company, and in fact at a time when the Labor Board was conducting an election. The court treated the strikers as employees because they left work in consequence of current labor disputes and pointed out that the act did not make it clear how long the preferred status of the strikers was to continue. *Black Diamond Steamship Corporation v. National Labor Relations Board* (94 F. 2d 875). Because the act does not make clear how long the preferred status of strikers continues, there is nothing to restrain the Labor Board from continuing that status indefinitely and the act should now be corrected to make the period definite and reasonable.

A further reason for the amendment which I suggest is that the law, as it now stands, permits the Board, through the use of the "current labor dispute" concept, to override and disregard the choice of bargaining representatives of employees in many cases. What I wish to point out now is quite apart from the effect of the "current labor dispute" provision on the right of employers to use their economic strength. The unfairness from the point of view of an employee comes about in this manner: A strike occurs in an economic test of strength; the employer is able to restaff the plant and resume operations; the employees in the plant organize and their union seeks certification by the Board. Although the strike may have been over for many months in a realistic sense, the Board, nevertheless, rules that the persons who went on strike are entitled to vote in the election, with the result that persons not working in the plant can nullify the choice of bargaining agent of the employees who are working in the plant. Obviously, such a result is out of harmony with the principles that the act is supposed to protect.

No act that is passed here is going to instantaneously cure labor difficulties. But until the policy of the Government becomes one of impartiality in which the various economic factors are allowed to have free play, we will never correct the misconception in the minds of many people as to the rights of management in labor difficulties.

I think the definition of "employee" in the Wagner Act should be changed to exclude persons who have been on strike in an economic struggle with the employer after a reasonable length of time, which should not be longer than 60 days. Since the language of the act defines who are employees, the phraseology would have to be the other way. I would propose the amendment of section 2 (3) of the National Labor Relations Act to include in the definition of "employee" any person "whose work has ceased for a period of not longer than 60 days as a consequence of, or in connection with, any current labor dispute."

This would not affect the status of an employee where the strike was the result of an unfair labor practice on the part of the employer, but where the strike was called as a test of economic strength in a demand for higher wages or shorter hours or better working conditions, it would mean that the employer would be required to treat the strikers as employees for a period of 60 days and that thereafter the dispute could not be considered current by the Labor Board. Such a provision would not mean that striking employees were automatically discharged after 60 days. It would only mean that they might be replaced. Not only would this restore to the employer who has committed no unfair labor practice a reasonable weapon which he should have in a labor controversy; namely, the right to hire people to replace the strikers, but it would relieve him of the necessity of dealing with the strikers for months and months after the strike was called.

Such a limitation would have an additional beneficial effect. It would be notice to both sides that if the strike was not settled in 60 days the men could no longer be sure that their jobs would be restored to them and there would be no necessity for further bargaining conferences. The approach of this terminal date would

be a powerful incentive to both sides to settle the matter, and if it were not settled before that date, prospective employees would be safe in taking employment and be certain that they could not be ousted in favor of strikers. A manufacturer could begin to build up a new force of employees after 60 days with the confidence that he would not be subjected to a huge liability for not having rehired strikers. The economic power of the two opposing factions would be more nearly equal and men would be slower to go out on strike without the assurance of restoration of their jobs which they now possess, because of the Board's policy of treating a dispute as current even a year and a half after the strike occurs.

Some comments on this proposal have distorted its meaning and effect. One writer, at least, has said that it means that an employer, after 60 days, can arbitrarily discharge all his employees and that would be the end of the matter. The writer overlooks the fact that strikes, other than those involving unfair labor practices, which the amendment would not affect, are called by the employees themselves. If the strike is popular, it will be successful and the result will be that the employer will yield. If it is not supported by the employees, the employer may prevail, as he should prevail, and the few recalcitrants who would stop at nothing to continue the strike, regardless of the losses of their fellow employees, will be faced with the realization that they may have no jobs to come back to. This result, at first glance, may seem to be a hard one, so far as the individuals are concerned but once again I urge that if strikes are to be sanctioned as tests of economic strength, it is a fair part of the test. Moreover, it is a signal deterrent to those strikes which have no real merit but flow from union politics or the whim of a few unhappy persons. In the last analysis, if strikes meant a little more to the front-line people who have to bear the burden, they might be less willing to follow the dictates of the union leaders, who have come to regard strikes as the weapon of the unions, rather than as a weapon of the workers.

Senator SMITH. It was our intention to finish the hearing this morning, but we have one more witness waiting. If he wants to appear in person instead of filing his brief, I will be glad to hear him.

Is Mr. Johnston present?

Mr. JOHNSTON. Yes, Mr. Chairman.

Senator SMITH. We will recess now until 2 o'clock this afternoon, when we will hear Mr. Johnston's testimony.

Mr. JOHNSTON. Thank you, Mr. Chairman.

(Whereupon, a recess was taken until 2 p. m.)

(Subsequently, pursuant to the chairman's request, the following report was received from the National Labor Relations Board to be inserted in the record:)

NATIONAL LABOR RELATIONS BOARD,
Washington 25, D. C., February 20, 1947.

SENATE COMMITTEE ON EDUCATION AND LABOR,
Senate Office Building, Washington 25, D. C.

GENTLEMEN: At the close of the testimony of Mr. Earl Reed of the law firm of Thorp, Bostwick, Reed & Armstrong, of Pittsburgh, Pa., on February 12, 1947, Senator Morse requested, and Senator Smith (then presiding) granted, leave to the National Labor Relations Board to file a statement in connection with Mr. Reed's testimony. We greatly appreciate the committee's fairness and courtesy in granting us this opportunity. We trust that you will incorporate this statement in the record of the committee's hearings.

The Board has investigated the charges made by Mr. Reed and categorically denies them.

At the outset, the Board invites the attention of the committee to the fact that this is not the first time that Mr. Reed has made unwarranted accusations of bias and prejudice against the Board; further, most of the matters to which he refers are presently in hearing before a special master appointed by the third circuit court of appeals. When the Board's turn comes in that proceeding, it will in rebuttal fully answer the charges made. Mr. Reed's allegations, so far as

can be learned, were made without any effort to learn the true facts, and without waiting until the Board's position had been presented in rebuttal. We should have thought that a member of the bar would have preferred not to tell just his side of a case to your committee while that case was still pending before an agent of the Federal court.

1. The third circuit court of appeals in the case of *National Labor Relations Board v. Weirton Steel Co.* (135 F. 2d 494), decided May 4, 1943, said at page 496:

"In the light of these facts it becomes difficult for us to avoid the belief that the company's charges of prejudice and unfairness are not advanced on their own merits but rather were devised as a defense to the charges of unfair labor practices as to which no other defense was available."

At page 497 the court stated:

"We conclude that the record does not justify a finding that the Board's decision was reached as a result of bias and prejudice or that the manner in which the hearings were conducted denied the company due process of law. On the contrary, we are left with strong impression that much of the conduct complained of was deliberately provoked by counsel for the company, possibly to lay a basis for a defense to charge which otherwise could not be met."

2. The Board moved to hold the Weirton Steel Co. in contempt of the order of the third circuit court of appeals because, in our judgment, the evidence established a prima facie case that the company had dominated the Weirton Independent Union, Inc., in violation of the court's decree; had instigated violence and beatings against employees exercising their legal right to join trade unions; had discriminated against union members, and had otherwise interfered with, coerced and restrained its employees in the exercise of their rights. After the company had filed its answer, the Board moved for judgment on the pleadings; the court stated in ruling on this motion (146 F. 2d 144, at p. 145):

"The Board makes strong argument for the conclusion that the respondents have been guilty of contumacious conduct as charged."

The court appointed a master to take testimony on the matters alleged, who is now sitting. We believe that Mr. Reed's allegations are an effort to divert attention from the merits of that proceeding, and are in any event a breach of legal proprieties since the matters are present being heard.

Our replies to the allegations are as follows:

1. Mr. Reed charges (record of proceedings, p. 1620) that—

"The Labor Board has tried in every way to wipe out the independent union existing at Weirton, even to installing Board representatives in the CIO union headquarters to coach paid CIO organizers as to the methods they should use to get on the company pay roll in the company's shell plant."

We attach copy of an affidavit supplied by Attorney Winthrop I. Johns, the Board's chief counsel in this case. It appears that the paid CIO organizers to which Mr. Reed refers were in reality former employees of the company who alleged that they had been discriminatorily discharged (affidavit, p. 2). The testimony concerning the incident appearing in the record before the special master is hearsay on hearsay. It appears that these men had consulted Attorney Davis (we enclose copy of a letter from him) about accepting offers from the company of construction jobs rather than skilled work and that he (Attorney Davis) advised them to take the jobs. In our judgment a disservice would have been done the war effort, the company, and the employees had other advice been given.

2. Mr. Reed charges (record of proceedings, p. 1620) that—

"Furthermore, Board representatives attended secret conferences at which CIO leaders paid bribes to officials of the independent union to induce them to betray it by going over to the CIO while at the same time holding their offices in the independent union."

It appears (Mr. Johns' affidavit, p. 3) that four witnesses were present when this alleged transaction took place; only one of them testified to this effect, and he had admittedly taken money from the company, the Weirton Independent Union, and the CIO. Board Attorney Sherman categorically denies that any money passed to his knowledge at this meeting (his affidavit is attached). Other witnesses are prepared to support this denial (Mr. Johns' affidavit, p. 3).

3. Mr. Reed refers to the "Board's policy of exterminating independent unions." (Record of Proceedings, p. 1616.)

As required by section 8 (2) of the National Labor Relations Act, the Board has used its power to disestablish company-dominated unions. It has not attempted to exterminate independent unions.

The Board's records disclose that for the fiscal year ending June 30, 1946, for example, of 270 cases disposed of involving charges of company domination, only 51, or 18.9 percent, resulted in disestablishment of the accused unions. Moreover, independent unions participated in 722, or approximately 11 percent of all elections and cross checks conducted by the Board during the year, winning 484, or 67 percent, of the contests in which they participated (NLRB Eleventh Annual Report, appendix A, tables 13 and 15).

Mr. Reed further asserts that the Board has seized upon the slightest bit of evidence in finding company domination of independent unions. He cites two cases, both of ancient vintage, as allegedly showing that the Board has based findings of domination upon such incidents as an employer permitting the union to use a company mimeograph machine for the preparation of notices or permitting the use of a room on company premises to hold a union meeting. In those cases, the Board has pointed to the provision of such facilities by the employer merely as part of other facts and circumstances which, taken together, established that the employer had dominated the so-called independent union, although any one of them, standing alone, might be regarded as trivial, and no one of them, of itself, could afford a sufficient ground upon which to base the ultimate decision.¹ This approach has been approved by the courts (*N. L. R. B. v. Norfolk Shipbuilding & Drydock Corp.*, 109 F. 2d 128 (C. C. A. 4) *N. L. R. B. v. Christian Board*, 113 F. 2d 678 (C. C. A. 8)). Indeed, the Board, because of surrounding circumstances, has refused to characterize financial or other aid to an independent union as violative of section 8 (2) of the act.² As for an expression of preference by the employer for an independent union, which Mr. Reed maintains the Board seizes upon as a ground for disestablishment,³ the Board has held such statements, in themselves, to be privileged as an exercise of freedom of speech (*Matter of Oval Wood Dish Corp.*, 62 N. L. R. B. 1129).

In this connection, Mr. Reed also states that it is of no concern to the Board that the employees in these cases may have expressed a desire to be represented by the union which has been found to be company dominated. The function of the Board, of course, is to ensure that employees remain unhampered in the exercise of the right of self-organization so they may be able to exercise a free and untrammelled choice of bargaining representatives without regard to whether such organization or representation takes the form of a union affiliated with a national body or one wholly unaffiliated. The unfettered exercise of the right to self-organization may be obstructed by the existence of a labor organization under the dominance of an employer just as genuine collective bargaining is thwarted where the employees, in the mistaken belief that the company-dominated organization affords a genuine agency for collective bargaining, choose an organization which is in reality incapable of functioning in that capacity (*N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270, 271; *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S.

¹ In *Norfolk Shipbuilding* (12 N. L. R. B. 886), cited by Mr. Reed, in addition to the union's use of the employer's machines, the Board relied upon the following facts not mentioned by Mr. Reed: The employer's supervisors were prominent in the formation and organization of the union and in securing members for it; union meetings were held on company property and membership was solicited during working hours, whereas rival union organizers were denied access to company property; the union's wage requests were granted by the company without inquiry as to its majority status and were publicly credited to the union by the company; and effective action by the union as to its internal affairs could be taken only upon agreement with the company (decided May 12, 1939).

In the *Revere Copper* case (16 N. L. R. B. 437), also cited by Mr. Reed, in addition to the use of the company premises, the Board relied on these additional facts: The company demonstrated its desire to members of the previous company-dominated union that a similar organization be continued in the plant; the company did not notify the employees that it was abandoning its former practices and that the employees were free to change the form of representation; the company expressed a willingness to deal with the union before any proof of majority was made or offered; representatives of the union's company-dominated predecessor organized the union and company supervisors solicited members for it; and the composition of the union's governing body was regulated by contract with the company (decided October 25, 1939).

² *Matter of Mallinckrodt Chemical Works* (63 N. L. R. B. 373); *Matter of Mohawk Carpet Mills, Inc.* (12 N. L. R. B. 1265).

³ We note that Mr. Reed cites no case in support of this accusation.

241, 250, 251). In other words, employee desire under these circumstances stems from employer domination. Thus the employer will find himself on both sides of the bargaining table.

It is true that where the Board has found that the employer has assisted or coerced its employees to join a union affiliated with a national labor organization, it has not ordered disestablishment of the local. But this is so because assistance to a local union chartered by and subject to the constitution and bylaws of the national organization obviously cannot extend to the point of constituting domination by the employer. From the very character of the affiliation, the local group draws strength and direction from sources necessarily outside the employer's control, and accordingly cannot, at least for any extended period of time, be used as a mere instrument of an employer to deprive employees of the free exercise of the rights guaranteed by the act. The local union can hardly be said to be the creature of the employer inasmuch as it manifestly must be and is the creature of its parent body. The practice of the Board, also adverted to by Mr. Reed, of setting aside contracts between an employer and an independent union where the latter has received unlawful assistance from the employer, but is not found to be dominated or controlled by him, cannot be called discriminatory with respect to independent unions inasmuch as the Board, under similar circumstances, orders contracts set aside where the contracting union is affiliated with a national organization. (See, for example, *Matter of Flotill Products, Inc.*, 70 N. L. R. B. 119; *Matter of G. W. Hume Company*, 71 N. L. R. B. No. 81.)⁴

Another of Mr. Reed's contentions refers to decisions of the Board in so-called successorship cases which, he says, are based on no more than a "speculative theory that since there once was a dominated union, the employees are so cowed that they couldn't choose a new union until the CIO or AFL comes along." Mr. Reed thereby gives the impression that any union organization by the employees in a plant where an employer-dominated union once existed would be disestablished by the Board. Actually, the Board requires that true successorship be established. In each instance where a dominated union has been dissolved and is succeeded by an ostensibly independent union, the Board decides on the basis of the entire record whether the new union is a genuinely different and unassisted labor organization.

The facts differ in every case. Factors considered as indicating continued company domination include identity of officers and leaders of both organizations, similarity in organizational structure, bylaws, and constitution, the transfer of assets from the old to the new organization, and favoritism by the employer to the new organization as against a rival legitimate union. The Board also considers whether an alleged successor to an old employer-dominated union has freed itself of the taint of illegality of its predecessor. In this connection, the Board regards as controlling whether the effects of the employer's domination of the earlier organization was effectively dissipated before the formation of the alleged successor organization, so that the employees who joined the successor or designated it as their bargaining representative were in fact able to exercise a free choice. The reasonableness of this requirement as necessary to the proper guarantee of the rights of employees has been attested to by the highest courts (*N. L. R. B. v. Newport News Shipbuilding and Dry Dock Co.*, 308 U. S. 241, 250; *Westinghouse Electric & Manufacturing Company v. N. L. R. B.*, 112 F. 2d 657, 660-661 (C. C. A. 2), *aff'd per curiam* 312 U. S. 660). Mr. Reed's suggestion that a Board-ordered election constitutes a solution to the problem again assumes, as heretofore explained, that the employees will be entirely free of the employer's domination at the time that they register their choice. It begs the very question at issue.

Mr. Reed also refers to an aspect of the successorship problem in asserting that the Board seizes upon the employer's failure to notify his employees that he will abide by the law as a reason for disestablishing an independent union. That such a basis for the Board's order is merely a pretext, he contends, is shown by the fact that in a number of cases where employers have given such notice, the Board has nevertheless found the notice unimportant and ordered the disestab-

⁴ Note also the decision of the Board in the *Western Electric* case (2-C-4508, 2-C-5069), decided only yesterday, February 19, 1947. There the Board has refused to set aside a contract made with an independent union of telephone workers with national independent affiliations despite its finding that that organization had been assisted by the respondent company at its inception.

lishment of the successor union. In the Roebbling case (17 N. L. R. B. 482), cited by Mr. Reed in support of his proposition, the Board found that the successor association was not a new and truly independent labor organization, but rather a continuation and reorganization of the original company-dominated plan, mainly because of the employer's expressed hostility to outside unions, its expressed preference for an inside union, the manner in which the association evolved out of the plan, and the association's structural organization. On the basis of these and other factors, the Board concluded that the employees justifiably believed that the association was dominated and favored by the employer as the plan had been, and thus were unable to exercise their rights freely and unhampered. The Board there indicated that had the employer taken affirmative steps to assure the employees that its previous unlawful policy was no longer in effect, and that they were completely free to do as they wished in organizational matters, a different conclusion might have been warranted.

In the *Continental Oil* case (22 N. L. R. B. 61, enf'd as modified in 121 F. 2d 120 (C. C. A. 10)), another very old case, which Mr. Reed also cites as demonstrating the Board's disregard of such notices when given, the announcement to the employees posted by the employer stated that the National Labor Relations Act required some revisions in the council plan (the previously existing and admittedly employer-dominated union), but that "revisions can be made in the existing plan which will bring it completely within the scope of all the requirements of the act, and enable the continuance of collective bargaining substantially as has been the case in the past few years." Such a notice cannot be said to have dissipated the effects of the employer's domination of the earlier organization so that the employees were thereafter free in their selection of its successor. In fact, the employer there actively took part, through its supervisors, in organizing the successor union out of its predecessor, and contributed financial and other aid and support to the successor. Notice is merely one of the factors considered by the Board in determining whether the successor is truly a new and independent organization and whether the employees are in truth free to exercise their wishes in regard to joining it or selecting it as their bargaining representative.

Finally, in regard to independent unions, Mr. Reed criticizes the Board for considering evidence of employer domination which goes back some years before the date of the Board's finding. He asks us to blind ourselves to facts. Obviously, in determining the present status of a labor organization the Board must consider all relevant evidence, including the history of its organization as well as other facts concerning its existence. Unfair labor practices of an employer may continue for a long period of time before the Board can take action concerning them, inasmuch as the facts relating thereto do not come to the Board's attention until a charge is filed with the Board, which normally would not occur until the employees attempt to organize a union or the employer refuses to recognize a union asserting a claim to recognition.

Indeed, where evidence of the employer's acts of domination with respect to a predecessor union is remote in point of time and the facts indicate that the presently existing independent union has not been sponsored or controlled by the employer and was freely chosen by the employees, the Board has held the independent to be a genuine labor organization free from employer domination. (*Matter of Wisconsin Telephone Company*, 12 N. L. R. B. 375, 392-393; *Matter of Sprague Specialties Company*, 20 N. L. R. B. 585, 595).

Mr. Reed's proposal calling for the enactment of a 1-year statute of limitations on charges of union domination is clearly without merit. "What difference," he asks, "does it make if the independent union was blessed by the employer years ago, or if it is a theoretical descendant of a dominated union?" The evil lies in the present-day existence of a company-dominated union which operates to preclude the union from representing adequately the interests of the employees, or which denies the employees the exercise of complete freedom of association, self-organization, and designation of representatives of their own choosing, with the consequent obstruction of true collective bargaining. Setting an arbitrary time limit of this kind would operate to reduce materially the number of situations in which the Board could remove a serious impediment to genuine collective bargaining. It would encourage once again on our industrial scene the appearance of the company-dominated union and the spectacle of the employer sitting on both sides of the table in bargaining negotiations. Moreover, such an amend-

ment would induce legitimate unions, for their own self-protection, to hasten to file 8 (2) charges on mere suspicion of acts of company domination in order to toll the statute of limitations, and thus burden unnecessarily the Board's administrative machinery.

4. Mr. Reed refers to "the Board's practice of requiring the reinstatement of strikers long after a strike is actually over, even though the strike is not the result of an unfair labor practice." (Record of Proceedings, p. 1616.) It would serve no useful purpose to enumerate all the inaccuracies in Mr. Reed's statement; the law on the subject is as follows:

"An economic strike is brought on by no illegal conduct of the employer. It is the use of economic pressure to obtain demands.

"Such strikers take their chances on losing their jobs as a result of the strike, for the employer is privileged to replace them permanently. This doctrine, perhaps more liberal in the employer's favor than the pre-act concept, was formulated by the Board and the Supreme Court in the early days of the Board's history in *Matter of Mackay Radio*, 2 N. L. R. B. 500 (1936) and *N. L. R. B. v. Mackay Radio*, 304 U. S. 333 (1938).

"The Supreme Court, agreeing with the Board's view, made it clear (at pp. 345-346) that preservation of the right to strike in section 13 of the act does not mean that "an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them."

"The Board has consistently adhered to this concept of the nature of the employer's privilege and the risk assumed by employees in an economic strike, holding that the employer is free during the course of such a strike to make any appropriate arrangements for the performance of the work during the strike and is under no duty to alter those arrangements in order to make room for returning strikers. See, e.g., *Matter of The Solvay Process Co.*, 47 N. L. R. B. 1113 (1943).

"The sole limitation upon the employer's freedom to select his employees in economic strike is that he may not refuse to reinstate the strikers to existing vacancies merely because they engaged in concerted activity. (*Mackay*.) A refusal for this reason is tantamount to a discriminatory discharge, and the striker receives back pay from the date on which the discrimination occurred (*Mackay*). Practical experience justifies this remedy, for normally an employer prefers "seasoned" and experienced men to "green hands," *N. L. R. B. v. Remington Rand*, 94 F. 2d 862, 871 (C. C. A. (2) 1938), certiorari denied, 304 U. S. 576. If an employer were permitted to discriminate against strikers, the preservation of employee status would have no meaning (*Mackay*, S. Ct.) and violence would be done to the pre-act concept of striker status embodied in the statute. Indeed, the requirement against discrimination in the rehiring of economic strikers is no different from the duty not to discriminate against ordinary applicants for employment. *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177 (1941)."

We shall be glad at any time to furnish such other or further information as the committee may desire with respect to these or other matters.

Respectfully,

NATIONAL LABOR RELATIONS BOARD,
PAUL M. HERZOG, *Chairman*.
JOHN M. HOUSTON, *Member*.
JAMES J. REYNOLDS, JR., *Member*.

STATE OF GEORGIA,
County of Fulton, ss:

AFFIDAVIT

I, W. G. Stuart Sherman, after being duly sworn, upon my oath, depose and say: I am 43 years of age, and live at 555 South Negley Avenue, county of Alleghany, State of Pennsylvania.

I understand that Mr. Earl Read of the law firm of Thorp, Bostwick, Read and Armstrong has testified before a committee of the United States Senate to the effect that a Board representative attended secret conferences at which CIO

leaders paid bribes to officers and representatives of the Weirton Independent Union in order to induce them to betray the said WIU and to go over to the CIO and to aid the CIO while still continuing to hold office in the WIU.

During 1944 and 1945 I was in charge of a joint investigating squad of field examiners and attorneys from the sixth regional office of the National Labor Relations Board and was engaged in investigating unfair labor practice charges which had been filed by the United Steelworkers of America, CIO. During the summer months of 1944 I was advised by Orval J. Kincaid, director of the Weirton organizing campaign for the USA-CIO, that he would make available to me for interview certain witnesses whose identity he would not disclose at the time because he alleged that the Weirton hatchet men and goon squad would beat them up if the company learned in advance of their intention to give testimony to a Board agent. He also advised me that the said prospective witnesses could not be interviewed at either Weirton, W. Va., or Steubenville, Ohio, because of the prevalence of company stool pigeons and spies at the above-named places. Kincaid further advised me that he would arrange to have me meet the prospective witnesses, some of whom he told me were WIU stewards at a hotel in a neighboring city. As I recall I had two or three meetings with Douglas O. Freshour, a former superintendent or general foreman at the company's Weirton plant and also a steward in the WIU. Subsequently, I was present at one meeting at which Mrs. Helen Bloczak Brosky (her husband, Mr. Brosky) Theodore Mellis, Arb. C. Warner and Douglas O. Freshour were present. Orval J. Kincaid was present at these conferences above referred to in the McLure Hotel, Market Street, Wheeling, W. Va. The conferences were usually held in a suite of rooms on the second or third floor of the hotel, adjacent to the corner of Twelfth and Market Streets. The suite consisted of a large drawing room, one bedroom with lavatory and toilet and another large separate toilet which adjoined the opposite side of the drawing room. In addition to Kincaid, an organizer of the USA-CIO, named Ralph Light, and Miss Dorothy Thompson, Kincaid's secretary, were usually present. The witnesses usually arrived at the room after dark which was approximately 9 p. m. and I commenced to interview them immediately upon their arrival. When I finished the interview with the witnesses in the suite I immediately departed from the suite and the time varied from 11:30 p. m. to 1 a. m.

The occupants of the suite during the conferences would occasionally circulate from one room to another room but as I recall the doors leading to said rooms were left open. As a rule I sat in the far corner of the drawing room which commanded a view of the entire drawing room and a view into the bedroom and the extra toilet which was attached to the side.

At no time did I observe Orval J. Kincaid or any other CIO representative who may have been present either offer or give money or other financial rewards to any of the prospective witnesses whether WIU stewards or not. As of the time of holding these meetings I had received no intimation or direct knowledge that Kincaid or any other CIO representatives were paying any of the prospective witnesses for any purpose whatsoever. As a matter of fact, neither the Broskys nor Warner gave an affidavit to the Board agent at the meeting in the McLure Hotel. No bribes were paid to any persons in my presence at any time. I advised the prospective witnesses of the nature of the unfair labor practices charges which had been filed by the union and asked them if they knew any pertinent facts or information concerning the situation embraced in the subject matter of the charge. Mr. and Mrs. Brosky were very excited and flustered and could not recall anything pertinent to the situation at the time of my interview with them in the McLure Hotel. Theodore Mellis was very voluble and loquacious. He could recall a great many instances of violations of the National Labor Relations Act by the company but all of said activities and violations had taken place before the date of the Board's decision and order in the prior case involving the Weirton Steel Co. Arb. C. Warner could recall that he had made a trip to Pittsburgh, Pa., with Foreman Laco Wilson, who had told him that the purpose of the automobile trip was to obtain new membership cards for the WIU. Warner did not sign an affidavit to this effect until a subsequent time.

While I was present at these conferences the only activity which transpired was the interview of the prospective witnesses. I do not know what activity transpired at these conferences after I departed from the hotel suite.

If any money was ever paid to the WIU stewards for any purpose it was probably paid after I departed from the meetings or at some other time and

place. I am certain that no money was paid to the prospective witnesses mentioned above immediately before the meeting at the hotel because I usually arrived at the hotel 2 or 3 hours before the arrival of the witnesses and would contact them immediately upon their entry in the suite of rooms in an effort to obtain any pertinent information and data from them concerning the case.

I deny that I knew of or had any part in any scheme or plan to bribe or induce by financial rewards any persons to betray the Weirton Independent Union and become members and adherents of the USA-CIO while continuing to hold office in the WIU. Kincaid was ultrasecret about all matters of union policy and strategy and would not tell me the names of the prospective witnesses until I actually met them. For instance, in all prior contacts with Kincaid before meeting Douglas O. Freshour, Kincaid referred to him as the "dark horse."

This affidavit consists of four pages.¹

W. G. STUART SHERMAN.

Subscribed and sworn to before me this the 13th day of February 1947, at Atlanta, Fulston County, Ga.

[SEAL]

LUCILE C PAUSE,
Notary Public, Georgia, State at Large.

My commission expires July 17, 1950.

NEW YORK 16, N. Y., February 14, 1947.

GERHARD P. VAN ARKEL, Esq.,

General Counsel, National Labor Relations Board,
Washington, D. C.

DEAR GERRY: I am informed that Earl Reed made a statement before the United States Senate Labor and Public Welfare Committee with respect to the proceeding against Weirton Steel Co. for contempt of the United States circuit court of appeals in which he stated that he had been told by one Hatala who had been told by one Badis—

"We took jobs on the shell plant at the insistence of Davis, National Labor Relations Board attorney.

"When Davis found out we quit he was madder than heck because he wanted us to stay in there as long as we could to see what we could pick up on the foremen and superintendents and the company and report back to him."

I never said anything of that kind or nature to anyone, nor did I do anything to give anyone that impression.

For your information Hatala is a Weirton Steel Co. investigator. The foregoing third-degree hearsay statement by Reed is wholly inaccurate, and Mr. Reed apparently was misinformed.

Badis testified at great length over a period of several days before the master of the United States circuit court in the proceeding against the Weirton Steel Co. He related the details of Hatala's interview. Badis never mentioned anything like the statement above. The tenor of his testimony was decidedly contrary to that statement.

As I recall it the union filed charges with the National Labor Relations Board setting forth the discharge of a large number of employees by the Weirton Steel Co. because of their membership in and activities in behalf of the United States Steelworkers of America, CIO. After the company was notified of these charges, and at one point during the course of the National Labor Relations Board proceedings the company notified a number of them that they had jobs available for them and would reinstate them. Many of these employees were skilled mechanics or machine operators. The company also appealed to workers through newspaper advertisements and radio broadcasts to accept jobs in its shell plant. When the afore-mentioned employees called at the company's plant for reinstatement pursuant to the letters from the company, they were advised that they would be given laboring jobs on the construction of a shell plant then being built. Some of the men wanted to know why they could not be reinstated to their former jobs of skill, and inquired of the Board whether they were under obligation to take the jobs offered by the company. Those that inquired of me were told that it was more advisable for them to accept jobs in a war plant, where offered, than to be

¹ The four pages refer to the original affidavit.

criticized for a refusal to aid the war effort by not taking such jobs when the company told them they were needed for them.

The second paragraph of the hearsay statement of Mr. Reed purporting to quote Hatala on what Badis said to him does not attribute any direct statement to me, and there is no basis for the statement.

Sincerely yours,

JACK DAVIS.

STATE OF PENNSYLVANIA,

County of Allegheny, ss:

AFFIDAVIT

I, Winthrop A. Johns, being duly sworn upon oath, depose and say that—

I am a member of the bar of the District of Columbia, having been admitted to practice there in 1931. In 1937, I was admitted to the bar of the United States Supreme Court. In August 1937, I became a member of the legal staff of the National Labor Relations Board, and since 1944 have been a principal attorney attached to the Enforcement Section of the legal staff.

Prior to the institution of the contempt proceedings against National Steel Corp. and Weirton Steel Co., I was placed in direct charge of the preparation of such proceedings. I personally handled the presentation of the charges to the United States Circuit Court of Appeals for the Third Circuit, whose decree the Weirton Steel Co. and the National Steel Corp. are charged with violating. Upon the court's referral of these charges to a special master, Drayton Heard, a Pittsburgh attorney, for hearing, I was assigned as chief counsel for the Board in the trial of the issues and have remained such throughout the hearing.

I have been advised of the charges concerning these proceedings made before the Senate Labor Committee by Attorney Earl F. Reed, a member of the law firm which represents Weirton Steel Co. and National Steel Corp. in the proceeding before the special master, particularly the charge that—

"The Labor Board has tried in every way to wipe out the independent union existing at Weirton, even to installing board representatives in the CIO union headquarters to coach paid CIO organizers as to the methods they should use to get on the company pay roll in the company's shell plant," and the charge that "* * * Furthermore board representatives attended secret conferences at which CIO leaders paid bribes to officers of the independent union to induce them to betray it by going over to the CIO while at the same time holding their offices in the independent union."

Whether or not the independent union which exists at Weirton will be disestablished will depend upon the action of the United States Circuit Court of Appeals for the Third Circuit upon the evidence which is being taken in the pending proceeding.

Board representatives were never "installed" in the CIO union's headquarters. The record shows that a careful investigation of the charges before the Board was made by Board representatives before the institution of the contempt proceedings. In this investigation, persons of all interests were interviewed, including CIO members and officials, WIU members and officials, employees who were members of neither union, company supervisors and persons who had no connection whatsoever with those interested in the proceeding.

Some of the CIO members were interviewed in the CIO headquarters but the record of the proceeding before the special master shows that others were interviewed elsewhere and that WIU officers and members, company supervisors, and disinterested persons were interviewed at the WIU headquarters, their places of business, or their homes. (See for example transcript of testimony taken at the hearings before the special master of the third circuit court, pp. 5261-5262, 5938-5939, 7644-7646, 8085-8087, 8100-8101, 9622-9631, 9636-9641, 9653-9664, 9696-9705, 9765-9772, 10351-10356, 10490, 13542-13543, 15829; and the exhibit identified in the proceeding as petitioner's exhibit 124YYY.)

So far as I know, no Board witnesses ever coached "paid CIO organizers" as to the methods they should use to get on the company pay roll at the company's shell plant, nor has Weirton Steel Co. and National Steel Corp. ever shown in the hearing before the special master of the third circuit court that such ever occurred.

These "paid CIO organizers" referred to by Attorney Reed were employees of the Weirton Steel Co. who had filed charges with the Board alleging that they had been unfairly discharged by Weirton Steel Co. because of their union activities. The employment manager of Weirton Steel Co. testified at the hearings before the special master of the third circuit that these "paid CIO organizers" referred to by Attorney Reed were reemployed by the Weirton Steel Co. in the shell plant pursuant to letters of reemployment which he personally sent to each of the "paid CIO organizers" in June of 1944. (See transcript of proceedings before the special master, pp. 19950-19961.)

Undoubtedly, if any of these "paid CIO organizers" asked a Board representative whether he should accept the employment tendered by Weirton Steel Co.'s employment manager, the answer was "yes." These men were claiming that they were unlawfully discharged and if the company were willing to offer them reemployment any other advice would have been a sabotaging of the war effort.

The only matter developed in the controverted testimony before the special master of the third circuit which lends the slightest color to the accusation of Attorney Reed regarding the reemployment of these "paid CIO organizers" in the shell plant is the testimony of one of the company's investigators assigned to help company counsel in the proceeding before the special master. According to this company investigator, during a meeting after midnight with one of the former employees of the Weirton Steel Co., whom Attorney Reed has identified as "paid CIO organizers," the company investigator allegedly was informed by the former employee that he had taken the job in the shell plant at the "insistence of Davis, a Labor Board attorney," and that "when Davis found out he had quit he was madder than heck because he wanted us to stay in there as long as we could to see what we could pick up on the foremen and superintendents and the company and report back to him." (See the transcript of the proceedings before the special master of the third circuit, pp. 24388-24389.) This former employee of the Weirton Steel Co. had testified previously as a Board witness that at this meeting he had been offered reemployment and money by the Company investigators for information concerning the CIO. (See transcript of proceedings before the special master, pp. 327 et seq.) During the vigorous cross-examination of this witness by company counsel, there was no suggestion made by company counsel that the witness had told the company investigator that Davis or any other Board representative had talked to him in any manner about his employment in the shell plant, although the witness' employment in the shell plant and his alleged conversation with the company investigator was the subject of considerable cross-examination. (See transcript of proceedings before the special master, pp. 453-455, 370-378.)

Since the company investigator testified, I have consulted with Mr. Davis, who is now practicing law in New York City, and have been informed by Mr. Davis that he never engaged in the conduct or made the statements which the company investigator claims the former company employee attributed to him.

Attorney Reed's charge that Board representatives "attended secret conferences at which CIO leaders paid bribes to officers of the independent union to induce them to betray it by going over to the CIO while at the same time holding their offices in the independent union" is a grossly exaggerated statement of the facts.

The testimony taken before the special master of the third circuit court shows that Board Attorney Sherman was present for a while at one meeting in July 1943 between four officers of the Weirton Independent Union (hereinafter called the WIU) and CIO leaders and talked briefly with each of the WIU officers about their activity in connection with the WIU. (See transcript of the proceedings before the special master, pp. 4070-4073, 6243-6244, 6265-6268, 20142.) Of the four witnesses who testified regarding this meeting, only one claims that Board Attorney Sherman was present during any discussion concerning the WIU officers shifting their support to the CIO or when expense money was given to the WIU officers by the CIO leader. (See transcript of proceedings before the special master, 20142-20145, 4072, 6265-6268, 1200-1202.) The one WIU officer, who, when called as a company witness, accused Board Attorney Sherman of being present while the money was paid over admitted that he had appeared as a witness for the Weirton Steel Co. in every labor case in which the company has been involved and that he carried water on both shoulders for 6 months by accepting money from the CIO, and from the WIU and the Weirton Steel Co. (See transcript of the proceedings before the special master, pp. 20175-20181, 20190-20191, 20206-20211.)

These proceedings are still pending before the special master and at the present time the company is still engaged in the presentation of its evidence. Therefore, the Board has had no opportunity to answer the testimony of this company witness. I have, however, been advised by Board Attorney Sherman that he attended this meeting in July 1943 because he had been informed he would be able to interview persons who could give him accurate information on the charges then pending against the Weirton Steel Co., that he spent considerable time in talking to the WIU officers about the matters covered in the charges, that he left the meeting before any of the others did, and that he neither saw nor knew at the time of any money being given to the WIU officers by the CIO leaders. At the conclusion of the company's case, it is anticipated that Board Attorney Sherman will testify regarding his part in this meeting, and that additional witnesses will show that Sherman knew nothing about the money that was given to the WIU officers.

I, Winthrop A. Johns, state that I have read the above affidavit before signing same, that those things therein alleged as of personal knowledge I know to be true and those things alleged as of information and belief, I believe to be true.

WINTHROP A. JOHNS.

Subscribed and sworn to before me this 13th day of February 1947.

[SEAL]

BEATRICE MALLINGER, *Notary Public*.

My commission expires end of next session of Senate.

AFTERNOON SESSION

(The committee reconvened at 2 p. m., pursuant to recess.)

Senator SMITH. This hearing will please come to order, and we will hear from Mr. Forney Johnston of Birmingham, Ala., on behalf of the National Coal Association. Mr. Johnston, the other members of the committee will be here presently, but I think we might begin, so as not to hold you up. I regret that we could not continue this morning, but I think you realize we had quite a discussion.

Mr. JOHNSTON. Yes; I realize that, Mr. Chairman, and if this were a matter which could be adequately presented by filing a statement I should not trespass upon the time of the committee to hear it orally.

But, the coal industry is so vitally concerned, not only with the distant objective but the immediate problems, that we feel it necessary to give you some reactions.

Senator SMITH. Personally, I am very happy to hear from the coal industry, because, as we all know, this has been one of the big issues before the country. We will be glad to hear your testimony.

Mr. JOHNSTON. For that reason I shall find it necessary to give you a few background facts with reference to the industry as related to the present problems.

STATEMENT OF FORNEY JOHNSTON, BIRMINGHAM, ALA., REPRESENTING THE NATIONAL COAL ASSOCIATION

Mr. JOHNSTON. This appearance is on behalf of the National Coal Association which represents, within limited functions, approximately 70 percent of the commercial bituminous coal production of the United States; but let no one make the mistake of assuming that the 7,000 competitive coal mines in America, scattered over 28 States, of which approximately 3,000 are under Federal control, present a homogeneous picture or are organized to the extent of delegating essential functions to any central agency or can be dealt with as a single entity

for any organic purpose, particularly for any such purpose as the pooling of 400,000 mine workers in a vague, undefined central union benefit plan supported by company contributions. I refer, of course, to the collectivist tonnage tax forced on the industry by the Krug-Lewis agreement for a central union welfare fund.

Senator SMITH. Mr. Johnston, do you mind interruptions as you go along, or would you rather wait until you are through with your statement?

Mr. JOHNSTON. Not the slightest objection, Mr. Chairman.

Senator SMITH. I just want to ask the question as to whether you have seen the Taft-Ball-Smith bill with the provision in part 2 there for these so-called welfare funds and the trusteeship idea.

Mr. JOHNSTON. Yes, Mr. Chairman. We, of course, have no objection to any valid agreement which may be arrived at between industry and labor, either singly or collectively, that is voluntarily arrived at. Our basic objection is to the coercion of these funds through the sanctions with which Congress has surrounded the right of such insistencies without limiting them to legitimate functions of wages and working conditions.

That is the basis of the elaboration, practically, of this entire argument. For that reason, I am sure that we meet exactly what you have in mind in asking that question.

Senator SMITH. All right. We will be glad to hear you.

Mr. JOHNSTON. Now, before I relate this problem, and illustrate it by the welfare fund, to the coal industry, I should remark that the coercion of this collective benefit fund by strike sanctioned by Federal policy illustrates the objective for which labor is now reaching on a national scale and which industry cannot concede and survive. It is typical of the labor dispute imminently threatening coal, certain to force a showdown on relinquishment of Federal control, and is on the agenda of the principal central unions. In short, it fully illustrates the movement on the part of central labor unions to demand functions of management, supported by Federal sanctions. For that reason, frequent mention will be made of the matter as it fully illustrates the main points I wish to urge.

The first is that unless Congress promptly limits and defines the legitimate scope of labor disputes, as that term or similar terms are used in the Clayton, Norris-LaGuardia and Wagner Acts, strikes destructive of the public interest are as inevitable as they are imminent.

The second is that a simple formula exists for the removal of that menace, without impairing any sanction surrounding disputes with reference to wages and working conditions and without declaring illegal any agreement voluntarily arrived at between labor unions and employers, by a simple extension of the schedule to include all or most of the basic changes in labor policy necessary to the public welfare and absolutely necessary to industrial peace.

Essential amendments of the Wagner Act can be related to and simplified by this formula, as can the subjection of strikes to test of the public welfare by limiting their impact and their economic damage and waste to the contestants.

Now, returning to the background of coal, there is no industry in America in which there is greater diversity, in the social aspects and

in the wage standards and living conditions of the surrounding areas in physical and climatic conditions, in the available market for and competition with coal and other fuels, in the nature of the coal measures and quality and suitability of the coal and in the general economics of the industry such as cost of production, as shown by the fact that output ranges from 3 tons or less per man-day to 20 and 25 tons in the stripping operations.

Anyone who attempts to synthesize or centralize or personify this vast industry for welfare or any economic or organic purpose or for compulsory central bargaining, as mine labor is regimented, is deceiving himself and others. Labor leaders inciting their members, journalists desirous of being sensational who overlook the Sherman Act and stigmatize coal as one great operator which cannot coordinate itself, make the same mistake the Government made in using an illusory simplicity such as the pooling provisions of the Krug-Lewis agreement in order to evade its responsibility for intelligent discrimination. They alike do violence to the stubborn fact of economic, social, and constitutional diversity which has every possible variation incident to the American scene.

There is no justification in trying to strip these 7,000 lines of their individual responsibilities and of their individual relation to the public interest, of their organic diversification, their constitutional right of independent judgment and of their local problems and employee relationships and trying to concentrate them into a single, synthetic bulldog to be thrown biennially into a pit with John L. Lewis—a pit dug by the Government, and our dog, not John L. Lewis, muzzled by Federal laws and Federal administrative practices and the curtailment of basic rights.

The coal industry, and through that industry the public economy, has been disorganized beyond any other American industry as a result of the affirmative sanction given by the Federal Government to the prosecution, by means of the national strike, of labor disputes, now expanded into union levies on corporate funds and every form of invasion of the function of management and corporate responsibility. Coal production is the biennial, in fact the perennial, victim of the "no contract, no work" slogan, threatening and inevitably followed by the national strike, whether the Nation is at war or in the economic crisis of reconversion.

The vast majority of coal production is now, and has been handicapped by pro forma Federal possession for over 8 months, pursuant to the fifth Executive order of seizure of coal mines issued since April 1943. All of these seizures have been forced by strikes called under the power granted by the Federal Government to a central union to synthesize and coerce negotiation by the entire industry and therefore to stop production on a national scale, free of penalty, regulation, or civil liability, except as to strikes energized during the period of ostensible Federal control.

In coal, labor disputes are no longer plant or local problems. Each dispute presents a Nation-wide crisis. The Government has evaded its responsibility to face that perennial fact by the makeshift process of so-called seizure.

The coal industry and the public have not merited any such evasive and demoralizing solution.

The industry has a developed capacity for production well in excess of the peak demands of the American people. The cutting of coal is over 90 percent mechanized. Its loading and transportation is fully mechanized in a majority of the operations producing the major tonnage; and all substantial operations not on retreat are employing modern methods.

As a result of this mechanization, American production is over five times British production per man-day. The price of admiralty coal laid down at any short-haul port in England is double the price of comparable coal laid down at our large Eastern ports.

The earnings of the industry have been notoriously low as a result of strong competition and low prices to the American consumer.

The direct wages paid are the highest in industry and double the wage in dollar value paid the British miner. With 400,000 miners we produce in a normal year 600,000,000 tons. With 700,000 miners the British are struggling to produce 180,000,000 tons.

I may interpolate with a statement that it has been estimated that it will take the British mines from 15 to 20 years to reach a status of economical mechanization which we have long since attained, as I say, to a developed capacity which is sufficient to meet, assuming labor peace, the maximum peak requirements of the English people.

Senator MORSE. When I was in England recently, they told me that they not only have this problem of equipment in mines but that they have in many of their mines reached such a state of depletion that they are mining now great distances out under the sea. Is that a correct statement?

Mr. JOHNSTON. Yes.

Senator MORSE. Which, of course, is impairing the efficiency of their operations, too. Is that your understanding?

Mr. JOHNSTON. Yes; undoubtedly.

Ownership of the commercial operations is widely dispersed. Coal is being commercially produced in 28 States and underlies 500,000 square miles of State domain.

The coal reserves of the United States are sufficient for over 3,000 years. We own 51 percent of the world's supply. Coal and its derivatives constitute our guaranty of permanent industrial independence in world economy. The investment in the industry is well over \$3,000,000,000, constituting one of our top basic enterprises and easily the most diversified in ownership and location of the major-bracket industries.

Senator SMITH. That is a remarkable statement and a very reassuring one, Mr. Johnston, when you say the coal reserves of the United States are sufficient for over 3,000 years. Do I understand that we have enough untapped coal in this country that if we continue at our present rate of consumption we can mine it efficiently for 3,000 years to meet the needs of this country?

Mr. JOHNSTON. That is the estimate of the Bureau of Mines, and it is accepted in all the scientific studies which have been directed to my attention. The estimate runs to 5,000 years, but they are allowing a substantial fraction that is not recoverable of the tonnage.

Senator SMITH. Do you think we could send some coal to the British now to relieve them from this desperate emergency they are in?

Mr. JOHNSTON. If the mine workers turned in and mined the capacity of the pits to their capacity, there is not the slightest doubt of it that we could fill all the requirements of the American people and perform a substantial part in the aid of the desperate conditions which exist on the Continent and in England.

Senator SMITH. That is very interesting. I have had people call me just within the past 24 hours wondering whether we could not do something to relieve the plight of the British and western Europe at the moment by shipping some coal to them.

Of course, it would involve transportation, which might present a problem. But, so far as the coal supply is concerned, you think we could do it if it were produced?

Mr. JOHNSTON. Undoubtedly. But you cannot do it under the sanctions extended to labor institutions by the Clayton, Norris-LaGuardia, and Wagner Acts.

Notwithstanding these rugged facts as to plant, equipment, capacity, personnel, dispersion, competition, and abundance, the market for coal is being diverted wherever possible to oil and gas, of which we have an assured supply for less than a generation. This phenomenon is due directly to Federal labor legislation, extended by judicial decision and administrative action, accompanied by public conviction that nothing will be done about it.

Now with reference to these competitive fuels, let us take petroleum and natural gas. No doubt is expressed on the part of the coal industry, and on the part of research authorities, that within the space of the generation in which those vanishing materials in all likelihood may be exhausted, the production of petroleum and gas by processing coal will be fully competitive with the natural production of those competitive fuels within the space of 25 years.

It is for that reason that coal feels that it will have your most earnest cooperation in a reasonable suggestion made for the solution—made, as Senator Morse said this morning, not to approach a collision—which I believe the chairman stated this morning—but to resolve it.

The strike resulting in the current Federal possession was called to enforce, among other matters, union demands for contributions to a central union fund for a pooling of 400,000 mine workers, such contribution being in addition to, and wholly lacking legal or economic relationship to the direct wages paid the employees at the contributing plant or to the conditions at that plant.

The mine workers settled with Secretary Krug for 5 cents per ton—\$30,000,000 annually on normal production—but had demanded 10 cents of the mine owners—\$60,000,000—and suffer no compunction against restating the 10-cent demand or expanding it to any sum which a strike can coerce.

After less than 7 days' negotiation with the mine workers over the most difficult and complicated problem of wages and economics in America, and without disclosure of a single term of the proposed agreement to any known owner so vitally concerned, Secretary Krug, under coercion of the existing strike, surrendered for over 2,300 mines

the function of welfare to a union pool and substantial functions of management to the union hall. It can be stated that these provisions are unacceptable to a large proportion of the industry. Their economic unsoundness will be demonstrated.

The imminent termination of Federal control, with its grave or insoluble legal consequences, and the dumping of the administration's controversy with Lewis on the industry, make it obligatory that Congress shall deal with the problem not from the standpoint of the fate of the fines and injunctions to protect the simulation of temporary Federal operation, but from the standpoint of the actual public interest which is in perpetual jeopardy under present Federal labor policy.

There is nothing of decisive substance in the nation that the strike in November, which threatened the Nation with freezing and economic break-down, was against the Government. The controlling factor is that the time bomb which set off the strike—no contract, no work—was intentionally exploded against the safety of the American people, whether the Government or the industry was directing production.

Mr. Lewis' recent defiance of the Government and the courts is not at all startling in view of his habitual practice year in and year out, in war and in peace, of defying the health and safety of the people, with full legislative and judicial sanction of the Government, which is now becoming more sensitive to affronts to its dignity than for the welfare of the people by whose sufferance it exists.

Regardless of the quarrel between the administration and the mine workers as to the right to terminate the Krug-Lewis contract or the application of the Norris-LaGuardia Act to labor disputes during Federal possession, the early expiration of the wartime authority for seizure leaves the Nation's coal production exposed to the full consequences of Federal policy and therefore without protection from two imminent threats of public jeopardy. The first is the arbitrary and automatic slogan of "no contract, no work" to which the union leaders have habituated their forces. The second is the unregulated power of general strike used either to coerce specific terms and conditions such as the so-called central welfare fund or to require bargaining on part of the entire industry regardless of diversity and regardless of the impossibility of adequate representation of 7,000 mines in the bull ring with Mr. Lewis.

To call that "bargaining" is a misstatement. It is dictation and coercion.

For these reasons, so far as coal is concerned—and by that I mean the public interest in coal production—the necessity for action by Congress is not merely desirable. It is imperative.

Now, welfare funds. Enforced contributions by employers to unions or union funds of whatever character should be prohibited, whether the union be local or central. They are, in fact, prohibited by the letter of the Wagner Act—section 8 (2). This section declares it to be an unfair labor practice for employers to "contribute financial or other support" to any labor union. No one can doubt that if the vast contribution to a union welfare fund required by the Krug-Lewis agreement were contributed to unaffiliated local unions, the United Mine Workers would challenge it as domination and discrim-

ination and that the Labor Board would stop the payment and disestablish the independent union. But a central union has a permanent welcome with the Board.

The Senate committee stated, in reporting the Wagner Act, that pension benefits, and so forth, could be established so long as the organization administering it does not extend its functions "to the field of collective bargaining." In short, such benefits cannot be lawfully contrived through a bargaining union.

The Krug-Lewis provision is accordingly in violation of the Wagner Act. It is equally void under general legal principles as an express or charitable trust for incurable deficiency in drafting, uncertainty of object, and inoperable conditions. It was and is one of the monumental economic, legal, and constitutional blunders of the era, which the courts will doubtless redress by requiring restitution to the contributors; and if not recovered by the contributors from the cold storage where it lies uncertain and inoperable, there seems little doubt of the liability of the Government for the compulsory and protested diversion of these funds from mine treasuries, on settlement between the owners and the Government for Federal control.

But that is not enough protection against similar raids on individual or collective mines coerced by threat of mass strikes now invited by lack of statutory limitation upon the scope of statutory bargaining and sanctioned labor disputes, having no traditional relation to wages and working conditions.

Such enforced levies for central union welfare funds are in no sense to be distinguished from demands for compulsory profit sharing or any similar exaction.

Central union funds of such magnitude and amateurish inadequacy of drafting or adaptation to the contributing plant are contrary to State and Federal public policy and flagrantly inconsistent with developing social-security programs. Unions are neither experienced, organized, regulated, nor competent to handle them; nor could this committee foresee or draft a set of regulations sufficient to make any such collective plan legal, acceptable, workable, or adaptable.

These vast sums would make supergovernments of unions and confer upon them an economic dominance over their membership, which would in the course of time make it impossible for any member to sever his relation with the union. There would be no freedom to retreat from that union and no other union, however infinitely more preferable, could ever unseat it. That result, arising out of donations by the employer, is inconsistent with freedom of selection by employees of their representatives.

Senator SMITH. You would argue, then, that anything of this sort for welfare should be taken care of by our national social-security program?

Mr. JOHNSTON. Well, undoubtedly, it should be adapted as supplementing that, or as relating to the local union, and should be a matter of voluntary action by the immediate employer.

The point I make, and which is a live matter of consideration in this industry as it is in all others, is that the function of benefit, supplementing the complicated question of social-security and retirement, is essentially a local problem. It is the remaining asset, as I

undertake to show here, that the individual employer has to reestablish any community of interest and continuity and incentive to production and the continuous employment that has not been mutilated by the policy that has been administered under the Wagner Act.

I do not know of any factor for recovering some of the relationship and the direct responsibility and the common problems than to work out the relation with welfare to that particular plan.

Take the 7,000 mines. Many of them are on retreat. Many of them are mines which will go out of the picture as soon as normal competitive conditions are resumed.

Now, obviously, those which have a life of 2 or 3 years—some can be measured in months because of their noneconomic place in the picture—are more concerned with the immediacy of hospitalization and health. A mine with a reserve for 50 or 75 years, and a permanent and a modern camp, may emphasize the problem of retirement, say, at the age of 60 instead of age 65, is now worked out.

Now, this fund absolutely destroys any such right of that employer to adapt his benefit plan and his supplementing of the Federal system to his own local conditions. It drops the iron curtain between that employer and channels everything through a pooling, an unconstitutional pooling, of the employees who are forced into collective bargaining.

Similar demands are being formulated or pressed not only by Petrillo and by the mine workers as a result of the Krug-Lewis agreement. They are on the agenda for unions competing in the contest for membership and prestige. Agitation of these demands is guaranteed to cause strikes, on a wholesale scale, unless Congress withdraws the profit-sharing and pension field from the labor disputes now sanctioning unlimited strikes.

The Krug-Lewis formula is, moreover, inadequate from the standpoint of the Treasury regulation relating to pension trusts. The payment, of course, does not qualify as wages paid, for it is paid to no identifiable employee of the contributor. If the Mine Worker's Union could conceivably retain it, against suit to recover on termination of Federal control, the payments might be deductible not as a qualified pension but as a loss coerced by Secretary Krug upon the operation. But that pale advantage will not attach if any mine owner should, after relinquishment of Federal control, be coerced into a theoretically voluntary contract with the Mine Workers' Union under the same collective formula.

A further untenable aspect of the Krug-Lewis collective formula is illustrated by the fact that strip mines, with no underground workings, which produce 25 tons per man-day, pay \$1.25 per man per day into the collective fund, whereas high cost underground mines having the greater hazard and more employees and producing 3 tons per man-day contributes only 15 cents per man per day.

This characteristic of unequal contribution illustrates the violation of the fifth amendment by any such collective coercion, implemented by present arbitrary congressional policy. The first railroad retirement fund was affirmatively declared offensive to the fifth amendment because of this enforced collectivism. The present act has been

thus far accepted by the carriers without controversy in the hope that it would work, and because railway labor itself contributes a substantial part of the fund and the fund is administered and disbursed by the Government on the basis of social security, pursuant to law. Nevertheless, it operates by sufferance under a written stipulation, and the recent extraordinary increase in the levy is proving so burdensome to the railroads and so actuarially unsound that unless radically amended challenge is inevitable. This tolerated discrimination now underwritten by the Federal Treasury in favor of the railroad labor as compared with workers covered by the social-security acts or not covered at all, is hardly justifiable as a matter of general social policy.

It cannot be extended and delegated to competing unions by giving them the power of collectivism and coercion without destroying or dislocating Federal and State social-security systems and the entire developing problem. One thing is certain, collectivism within an industry cannot be lawfully forced on employers by compulsory bargaining and Congress should not tolerate it.

Now, speaking to the point of enforced collectivism the Supreme Court said:

We conclude that the provisions of the act which disregard the private and separate ownership of the several respondents, treat them all as a single employer, and pool all their assets regardless of their individual obligations and the varying conditions found in their respective enterprises, cannot be justified as consistent with due process.

That was *Railroad Retirement Board v. Alton R. Coe* (295 U. S. 330).

Senator SMITH. What was the date of that case?

Mr. JOHNSTON. About 1936 or 1937, I believe.

It is probably a matter of surprise that that was the situation, when we all know that the present Railroad Retirement Act is in full force. The amazing thing, concerning which my recollection was refreshed recently when I was assembling this material, was that it was done by a stipulation not to attack it, in an effort to make it work as a matter of voluntary action, by which the participating, contributing parties in effect selected the Government of the United States as their mutual agency to administer that which could not have been coerced upon them had it been challenged by the companies. I feel sure that that is an accurate analysis of the present anomalous status of that fund.

And, of course, I mean by the burdensome extension the act which is not only burdensome to the railroads notoriously, but is a matter of the most extreme discontent from the standpoint of the increase in the rate of contribution which the railroad employees are contributing.

Aside from the fact that a collectivist fund is unwarranted on the grounds of public policy and could not be directly imposed by an act of Congress, it is certain that welfare funds, profit-sharing, pension, and similar benefits in addition to the direct wage, are a function of management and should be reserved to the discretion of the company to agree upon voluntarily or to withhold them altogether or employ them to reward efficiency and promote loyalty at the plant of the contributor.

The owner and operator of a mine in Virginia has no more rational, economic, or social interest in contributing to a pool for mine workers in Arkansas and Utah than has any other citizen of a distant State or than any mine has in contributing to a pool for the retirement of long-shoremen. Implementation of the common or general interest of citizens and taxpayers in social welfare is a function of Congress and the States and not of competing and collective unions. Unless Congress removes compulsory bargains and levies of this nature from the scope of its labor sanctions, fights to the finish to preserve the industrial system from Congress' discrimination are not only likely but can be guaranteed.

No insurance company in the United States would write a block policy for health, accident, welfare, or retirement without a detailed analysis of the 2,300 units involved in Federal control.

When asked to comment on the Krug-Lewis plan, representative insurance officials of the highest standing state the formula to be unsound and unworkable, inconsistent with the development of the Federal system, and agree that as a supplemental function it is intrinsically one for consideration between the individual plant or company and its own employees, adapted to the basic factors in each company situation. As the plan is dimly foreshadowed in the Krug-Lewis agreement, it crashes across State plans, Federal plans, and the studies now in progress for use of the function as a local incentive to increased production and to restore the friendly contact and relationships which central unionism under Federal law has destroyed.

It was a confusion of the function of welfare and a thoughtless interference with that function as a factor for restoring good will and community of interest between the individual mine owners and their own employees when Secretary Krug coerced all mines into a central union pool for the purposes of welfare and scuttled the development of that function as a builder of good will and friendly relations and a powerful incentive to efficiency.

A contribution coerced from one employer for the benefit of 400,000 employees of other companies is a tax, a function of government, and is not wages or a legitimate subject matter for coerced bargaining or for a labor dispute carrying Federal immunities.

It is the open door for union demand for coerced profit sharing—not for the welfare of the contributor's own employees or as incentive to their greater efficiency, or their loyalty or common interest.

Senator PEPPER. Mr. Chairman, are you allowing interruptions?

Senator SMITH. Yes, Senator Pepper. The witness said he would be glad to have you ask questions.

Senator PEPPER. Mr. Johnston, I just arrived, unfortunately, but I heard you say that you thought the welfare fund was the function of the Government. Was that what you were referring to—and not the proper subject of a welfare fund of the sort that has prevailed in the coal industry?

Mr. JOHNSTON. Senator, I very emphatically take the position that the function of welfare, retirement, and other benefits is a function and a privilege and a responsibility of the local company to its own employees, but that, where that is extended from the domain of direct relationship between the employer and his own employees to miscel-

aneous and collective inclusion of the employees of 2,300 other companies, it must be a function of the Government or it is in violation of the fifth amendment.

Senator PEPPER. Well, you would support the Government undertaking directly to provide welfare services to the people?

Mr. JOHNSTON. It has already done so.

Senator PEPPER. I mean a great many of us think quite inadequately. Would you be prepared to support an adequate program of welfare services by the Government? If so, you would be of great help to us.

Mr. JOHNSTON. Well, Senator, we think all citizens, as long as the Government is undertaking the function, think that it should be fair, but they do not think that the function should be delegated to any mine union to levy a tax for its own membership and thus crash into the rationale of the Government plan which is under daily and continuing consideration.

Senator PEPPER. Senator Wagner and Senator Murray introduced, at the last session of Congress, a proposed amendment to the social-security law, and also a health program—a national health-insurance program—both of which, if accomplished into legislation, would adequately, I am sure, provide medical care and services and also welfare funds to the people of the country and completely eliminate the necessity for any such charge as this. Would the Coal Association be prepared to support those bills, or bills of similar character and purpose, do you think?

Mr. JOHNSTON. The Coal Association, of course, asks for no exemption from any law of general operation in the exercise of the functions of Congress with relation to welfare. It does protest against being singled out, in effect, by virtue of the Federal labor policies and sanctions, for what is, in effect, a tax levied not by the Government but by the union.

Senator PEPPER. It is not levied by the unions if the Government authorizes it, is it?

Mr. JOHNSTON. Well, the Government does not authorize it because the Government could not, directly; but it authorizes the—

Senator PEPPER. Oh; you mean the collective-bargaining agreement.

Mr. JOHNSTON. It is not a function of wages and working conditions, obviously; and, by the way, the miner is in the class of the highest paid labor in the United States.

Senator PEPPER. Let us suppose we all can agree that we are humanitarian enough in our intentions to want to see adequate welfare service afforded to the people. Now, probably, we might agree with you, some of us, that the Government is the agency that should make those services available. But, due to the opposition of a lot of people—I am not sure, but possibly the opposition of some of the coal industry, along with a lot of other people—we have never been able to get the Government to do that.

Now, in the meanwhile, suppose we are faced with the alternative of trying to work out these welfare arrangements, these services, through industry by industry, where the worker and the company pay, maybe, or where the company pays by a tax on the commodity that they send out, which is another way of making the public pay it,

just as the Government would make the public pay it, and, of course, the class that uses the commodity is smaller in number than the class that would pay taxes.

Now, in the interim, I say, before we can get enough support from people like you, who come in to help us pass those laws, would not our humanitarian desires to see these people get the benefit of these services maybe lead us to the best thing that we could get access to? Maybe a rendition of these services through a tax on the commodity or a certain amount on the commodity that is passed on to the people?

Mr. JOHNSTON. Senator, we think that is the function of the individual plant and its employees, and, so far as I am concerned, I am thoroughly committed to it as a major asset, as well as a responsibility, of the individual company. I think it is an asset, not a liability, in terms of community of interest.

Senator PEPPER. Somebody is going to have to look after these people. We have a public employment compensation law which means that industry pays the expense of wreckage of machinery and wreckage of human beings that get hurt in the mines. And, what is the difference in that principle and in passing on to the public the welfare fund, which is a way of providing for the purpose?

Mr. JOHNSTON. Senator, it is a function of the individual employer, a function not only from an economic standpoint between the individual employer and his employees, but it is an obligation under the fifth amendment that the company shall not have that power delegated either to a union or to—

Senator PEPPER. Well, the power is not delegated to the union. It is an agreement entered into between the company and the employees, is it not?

Mr. JOHNSTON. It is an agreement entered into, but, under what circumstances? I have not remotely suggested the invalidation of any agreement voluntarily arrived at between any employer and his employees or any union which is otherwise legal, in the light of the antitrust acts or of the rights, that does not impinge upon the rights of those who are not represented by the agreement.

Senator PEPPER. Well, the Government is not making you enter into such an agreement, is it?

Mr. JOHNSTON. Obviously the Government is, when the Government immunizes collective action by unions to the extent of bringing strikes that will paralyze not only that particular employer but an entire nation. It is arming that union with a deadly weapon to coerce that agreement, and it is not voluntary.

Senator PEPPER. You mean immunizing against quitting working for you because they do not sign the agreement?

Mr. JOHNSTON. Not quitting work. There is a difference between quitting work, which is constitutional privilege, which cannot be curtailed—

Senator PEPPER. I am glad to hear you say that.

Mr. JOHNSTON. I did not know that anyone had ever challenged it.

Senator PEPPER. It is surprising that people do, but there have been people.

Mr. JOHNSTON. No, but Senator, the difference between that and collective action, particularly, is where the impact is not only against

your adversary, that particular employer, but the public safety and health.

Senator PEPPER. But you said we immunized them in some way or other to do wrong against you. What do we do that immunizes them against responsibility for wrong against you? What do we do except give them the right to quit work if they do not want to work for you?

Mr. JOHNSTON. You give them an immunity from the common-law responsibilities as developed in the American courts for the consequences of illegal collective action. You have immunized them from any such responsibility.

Senator PEPPER. You mean collective action in the sense of quitting work at the same time?

Mr. JOHNSTON. Not quitting work. Striking, with the intention of returning.

Senator PEPPER. Quitting work?

Mr. JOHNSTON. Striking in order to stop production of that plant.

Senator PEPPER. I am not talking about the intention. I am talking about the act. The law looks at the act. If a man simply quits working for you, has he committed a crime? If he quits work at the same time a thousand other men do, has he committed a common-law crime?

Mr. JOHNSTON. That is the law of the land.

Senator PEPPER. You mean that is a crime?

Mr. JOHNSTON. It is actionable—common-law action.

Senator PEPPER. Has any court held if a thousand men quietly walk out from their work and quit, that it is a crime and punishable as such?

Mr. JOHNSTON. It is actionable at common law. That is the traditional conclusion of the American courts. That is, collective action to stop production.

Senator PEPPER. Even if all they do is just quit work, you take the position that that is a common-law crime?

Mr. JOHNSTON. I say for purposes other than that which is a legal dispute, as labor disputes sanctioned at common law, and that is for wages and working conditions. But, when the object of that dispute is to levy a tax on the employer to force profit sharing or to usurp the functions of management, that was an illegal objective for strike at common law, as developed in the American courts. And, it is from the consequences of that illegal strike that Congress has immunized the union.

Senator PEPPER. Well, we do not have any indictable common-law offenses in our country, do we?

Mr. JOHNSTON. I am not speaking of indictment. I am speaking of civil liabilities, so far as industry is concerned. If you remove from the sanctions of the Clayton and the Norris-LaGuardia and the Wagner Acts the extraordinary immunities for prosecuting a labor dispute by strike for an objective which was not admissible at common law, that is all that the coal industry asks, I think, or that industry as a whole asks.

Senator PEPPER. I thought you said a while ago that you did not want to interfere with what I understood you to recognize as the American right to quit work or to strike.

Mr. JOHNSTON. I do not; but, I think the question of collective action in pursuit of an illegal objective at common law is quite distinguishable from the right to quit.

Senator PEPPER. And, the effort of a workman to better himself in respect to obtaining a welfare fund or better living conditions or better wages is not, in your opinion, a legitimate subject of action?

Mr. JOHNSTON. No, sir. Wages and working conditions are legitimate subjects of collective action, even if carried to strike, but collective action to enforce dynastic reasons for mechanical and competitive advantages for one union, and the contribution is to be cleared through the union treasury, through exactions such as this, in addition to direct wages and adequate wages, is a very different matter.

Senator PEPPER. But it is a welfare fund. That is what it was.

Mr. JOHNSTON. I use "welfare fund," and I certainly hope that the members of the committee will not attach any significance to the fact that I use that as an illustration. It simply happens to be one here that was coerced upon this industry by strike, and coerced upon the Government agency that was in control of the lines by a strike then current. It might as well have been related to any one of similar encroachments upon the functions of management.

We must not be put in the attitude of opposing the principle of welfare, properly related to the right and responsibility of the individual employer or any such system on the part of the Federal Government.

Senator PEPPER. Have you, eminent lawyer that you are, made a study of the functions of workers to obtain such terms as are satisfactory to the worker? Can he not lay down any conditions he wants to, to work for you?

Mr. JOHNSTON. Certainly; or quit if he cannot get them.

Senator PEPPER. Surely.

Mr. JOHNSTON. But let us take an extreme example, and I think it would illustrate as far as I could agree or disagree with you on it. Let us assume that it was satisfactory to the worker, only if he were given a stated 20-percent interest in the net operating income after the deduction of fair wages, to stay at that plant. Now, I say that is all right, if the employer wishes in a voluntary way to enter into such an arrangement. But I understand your question to imply that he is able to strike and get that exaction without investment and without responsibility; then I differ with you. And I think that is exactly where your law places him now.

Senator PEPPER. I lay down the premise that he has the right to impose that or any other condition as a condition to his working for you. Do you dispute that?

Mr. JOHNSTON. Certainly; he can quit if he does not get it.

Senator PEPPER. That is all we are talking about.

Mr. JOHNSTON. But he cannot coerce you, and in the effort to coerce you, bring disaster to the general public to take that right of property from the individual.

Senator PEPPER. You use the word "coerce." You are not speaking about his right to quit working for you?

Mr. JOHNSTON. Not at all.

Senator PEPPER. You do not question that?

Mr. JOHNSTON. Absolutely not.

Senator PEPPER. That is what I was talking about.

Mr. JOHNSTON. I am sure we are in agreement on that.

Senator PEPPER. Thank you very much.

Mr. JOHNSTON. Now, the subject I have been discussing, as I say, was a mere illustration as to the welfare fund, but the same principle applies to coerced multiple-plant bargaining. I hope the committee will realize that we are not suggesting here that multiple plant bargaining arrived at by voluntary action, because that is proved or assumed to be economically desirable on the part of industry or any part of it, should be prohibited. But what we say is, it should not be coerced.

The coerced pooling of different employers or of widely separated plants, for welfare or any other purpose, is contrary to the basis of development of the American economic and political system, is economically unsound and individually unfair except where it is a voluntary and reasoned act on both sides.

I think Senator Morse observed this morning in connection with multiple agreements of that character that their effect on the anti-trust policies or any other invasions of current law called for scrutiny. With that I definitely concur. Certainly coerced pooling for multiple bargaining is not a legitimate function for statutory bargaining or congressional coercion.

A strike to force any such pooling of employers would be illegal at common law. Congress could not constitutionally force 7,000 mine owners to join in an agreement for pooling employees for any purpose, yet by grant of power through licensing strikes invalid at common law, to compel multiple-plant bargaining and its undue extension by the Labor Board and the misuse by central labor unions of the blanket sanction, individual plants are exposed not only to confiscatory industry-wide levies and funds such as reflected in the Krug-Lewis contract, but to arbitrary and unrepresented commitments inconsistent with their legitimate interests or in fact their ability to survive.

Senator PEPPER. Excuse me, Mr. Johnston. I did not hear all of your speech. I am reading it now behind you. But do you advocate the repeal of the Wagner Act?

Mr. JOHNSTON. No, Senator. There is no suggestion—

Senator PEPPER. You were speaking about what was illegal at common law. Has the Wagner Act, as a statute, legitimized these practices that you speak about in the sense of the national union being authorized to be the collective-bargaining agent for the men in all the many mines, so that it is not very pertinent to talk about what the common-law situation was a long time ago, when we have a statute at present which supersedes the common law?

Mr. JOHNSTON. The question is not the right of the men to associate themselves in any way they want. The question is whether or not their freedom of action has mutilated the similar freedom of action on the part of the individual owners to bargain individually for themselves.

Senator PEPPER. I do not want to take the time of yourself or the committee, but you speak and continue to speak about what the workers do as if they were doing something wrong. You speak about their coercion to get a welfare fund. My understanding of the facts is that they insist upon the inclusion of a clause in the contract providing for a welfare fund as a condition of entering into the contract.

Now, if they make that a condition to the contract, and they are American citizens and have a right to sign a contract or not to sign a contract, and a welfare fund is not contrary to public policy and not illegal, what wrong is it that they are threatening to commit? What coercion is it that they have committed outside the scope of an American citizen's right to determine the use of his own labor and the contracts he will enter into?

Mr. JOHNSTON. Senator, there is no wrong in their asking for it. The wrong is in their collective action of strike to destroy production and the peace and welfare of the American people in exacting that which is not a legitimate function of wages and working conditions at common law and not necessary to the legitimate protection of the American worker.

Senator PEPPER. You mean it is wrong in the legal sense for a group of men to say that they will not enter into a contract with the coal operators unless the contract contains a provision for a welfare fund?

Mr. JOHNSTON. No, it is not wrong if they say that and stop there. But, it is wrong if they then collectively shut down that plant, and the impact of their collective action is destructive of the economy and safety and health of the American people.

Senator PEPPER. All right. Now, the next question. Is it wrong for them to say, "We will not work in your mines unless we have a contract which is satisfactory to us governing the terms of our employment?"

Mr. JOHNSTON. I think I have answered that, Senator.

Senator PEPPER. But you say that is wrong?

Mr. JOHNSTON. No.

Senator PEPPER. To say, "We won't work for you unless there is a contract?"

Mr. JOHNSTON. If they stop there, or quit and never come back, and do not loiter on the highways and stop production—in other words, all of the paraphernalia of a strike which is in all of its details sanctioned by the Federal labor acts.

Senator PEPPER. You do not mean to say the Federal labor acts sanction any wrong kind of picketing or any assault and battery or any murders or robberies or anything else, do you?

Mr. JOHNSTON. I can only say that, as Justice Brandeis said, in *Deutsche v. Kansas*, a strike for an illegal objective is illegal, if it is for an illegal purpose, no matter how peaceably it is carried on. My statement is that where the objective is to impose exactions or terms that are functions of management and have no reasonable relation or legal relation to wages and working conditions, it is for an illegal purpose.

Senator PEPPER. And, to seek a welfare fund, in your opinion, is illegal purpose?

Mr. JOHNSTON. It is if it is exacted by strike.

Senator PEPPER. All right; thank you.

Mr. JOHNSTON. Now, the next subject that we think is of essential importance to the coal industry is the demand that supervisory employees be unionized.

Supervisory employees should be excluded from all statutory sanctions for collective bargaining and labor disputes having as an objective their inclusion in any bargaining union whatever. The selection and control of supervisory officials, including foremen, is a function of management and not of the union hall or of the union bargaining.

Unionization of supervisory forces is a contradiction in terms. This is particularly true where as under the National Labor Relations Act the union has the status of exclusive representation. The union is thus given the right, and indeed the obligation, to represent managerial personnel in bargaining, as a result of a bare majority vote, regardless of the wishes of the individual supervisor or of his own sense of obligation and responsibility to his employer.

Union control of supervisors is especially anomalous and objectionable in the coal industry, where mine foremen and fire bosses have not only responsibilities as agents of management but under many State laws they have duties as licensed public officers with respect to the enforcement of safety regulation.

It is idle to think that foremen can be organized in their own union and be thus invited by Federal law to strike, picket, and harangue against the management, and be subjected to union-hall control and discipline, and then be expected to represent the management and the State in dealing with parallel activities of that precise nature or with violations of law or company regulations by the rank-and-file union members. For that reason alone the conflicting duties and loyalties inherent in unionization, or exclusive union representation of supervisors, therefore, creates a standing menace to discipline and the lives of the miners, as well as to the efficiency and even the solvency of the owners.

As a practical matter, the foremen and assistant foremen are the sole representatives of management at the working faces and must not surrender their authority to the equalitarian basis of unionism.

Senator SMITH. You object, then, to their having their own union, even if it was not connected with the union that the workers under them belong to?

Mr. JOHNSTON. If it is a bargaining union. If it undertakes to assert any bargaining and demands through the union processes, and I am not criticizing what they are, but we think it is wholly inconsistent for them to assert that type of procedure, and then be in any sense free to object to precisely the same or to deal with the rank-and-file unions in carrying forward, using the same weapons.

Senator SMITH. You would not object to their belonging to some sort of organization of foremen, but you would not want to give them bargaining powers of the Wagner Act?

Mr. JOHNSTON. That is it exactly.

Senator SMITH. I can see why it would not be consistent for them to belong to the union they bargain with in representing management. I cannot see your other point.

Mr. JOHNSTON. There is not the slightest difference between belonging to the same union and belonging to a parallel union that is invited to use precisely the same, let us say, acts of aggression in exacting the terms and conditions of their employment. That is one class that must have confidence in the management and the economic desires of management to insure loyalty and confidence in continuity of service, or they must seek some other employment, but not do it by strike either for wages or working conditions or by exacting surrender by the management of the real functions of management and matters of that sort.

They cannot divest themselves of the union formula for themselves and then undertake to represent the management across an imaginary line into that of the rank-and-file union.

Senator SMITH. You would not say we should pass a law denying them the right to strike if they were not satisfied with the terms?

Mr. JOHNSTON. Absolutely not.

Senator SMITH. You merely say they should not be included as employees under the Wagner Act even though they are in a separate union?

Mr. JOHNSTON. That is right. A demand for unionization carrying the right of enforced collective bargaining should not be a function of a labor dispute so far as supervisory employees are concerned. The formula we are suggesting here would be easily taken care of by an amendment of the definition of labor dispute and related terms in the Clayton, Norris-La Guardia, and Wagner Acts.

If you take the demand for unionization of foremen out of those sanctioned classifications, which means the strike, then it leaves it to voluntary action and agreement between the individual company and the union. If any particular company thinks it is to its interest that it should permit foremen to be members of a union, we do not ask that any such agreement as that be invalidated.

We simply say it should not be coerced, and it should not be coerced as the basis of eligible labor dispute.

Senator ELLENDER. Mr. Johnston, have you studied the definitions included in S. 55 and S. 404 on supervisory employees?

Mr. JOHNSTON. Oh, yes.

Senator ELLENDER. Do they cover the situation?

Mr. JOHNSTON. In their reading, it appeared to me it was an adequate and fair set-up. We are not suggesting matters of detail. That is a subject for consideration when you get down to the final draft of these measures. But, I should say that S. 55 on supervisory force is entirely acceptable.

Senator MURRAY. Mr. Johnston, in the metal-mining industry they have small groups of men working under the direction of a shift boss, as they call them. Four or five men, for instance, would be engaged in carrying on mining operations, and with them would be another miner who had had more experience and he would be known as the shift boss.

Would you classify that shift boss as a supervisory employee and not entitled to be in the general union?

Mr. JOHNSTON. Senator, I would hesitate to suggest any specific conclusion on a particular case. It is one that there ought not to be any essential basis of disagreement on getting at which is bona fide supervisory.

Senator MURRAY. Of course, this shift boss would be engaged in supervising the work of those men, in determining how it should be carried on, and so forth, so that he would be engaged in supervisory activities to some degree. But they are selected because they are a little more experienced and therefore would know better how to direct the work. Now, those men are just miners like the other men working with them, except that they may have had a little more experience.

Mr. JOHNSTON. Senator, let us take the case of a deep mine, where a group of that sort is at the face, and it is essential for safety and discipline that somebody, whether he is more informed or more experienced or otherwise, have the right to exercise discipline. My general impression is that if that responsibility and duty were on him, and the duty of obedience, he would be the alter ego of the plant superintendent who may not get there for 4 or 5 days and could not be expected to be on the ground.

But, I do not want to have you gentlemen think that we think that there ought to be any technical or undue extension of the inclusiveness of the principle that those exercising supervisory authority should be exempted.

Other functions of management: Congress must determine now and finally whether the management or the labor union is to exercise the functions of management. Experience has shown that, in general, collective bargaining and labor disputes should not be sanctioned to include any interference whatever with any function of management or any assumption of the functions of management.

Statutory bargaining should be limited, so far as coercion by Government sanction is concerned, to negotiations relating to direct wages, hours, and working conditions; and should under no circumstances be extended to control the business of the employer in matters not directly involving the terms and immediate conditions of employment.

For instance, without invalidating voluntary agreement as to any lawful matter, Federal legislation should not sanction demands and strikes intended to prohibit or limit the use of labor-saving machinery or otherwise control processes and methods of production or the use of the employer's property, or to prohibit discontinuance of a department or an operation, or to control the time and quantity of production or to fix control, or limit prices or regulate financial policies, or to require a minimum number of employees, or to control promotions to supervisory or other managerial positions, or to limit the employment of supervisors to those who are members of a union or selected by the union; or to force managements to bargain jointly with other managements or on a regional or national or collective basis with respect to pooling their employees for welfare funds or any matter whatever. These are fair illustrations of illegal objectives of the strike at common law.

Senator MORSE. May I ask a question or two on those, Mr. Johnston? Would you exclude collective bargaining over contentions of infringement of safety, we will say, on labor-saving devices?

Mr. JOHNSTON. Well, I distinguish between a safety measure which is, I think, a condition that relates—

Senator MORSE. To working conditions?

Mr. JOHNSTON. To working conditions. But a labor-saving device may, for the time being, discontinue the employment of a certain number of employees, when our whole experience is that the net result of labor-saving machinery is to make more employment rather than less. I think it is perfectly obvious that the union should not be able or permitted to make that a sanction demand for which it could strike, as happens so frequently.

Senator MORSE. Well, let us take one of those cases where the labor-saving device, we will say, will decrease the employment in the industry 20 percent. The union says, "Well, we want to negotiate a settlement on severance pay. We recognize that you have a right to use this labor-saving machinery, but, in using it, it is going to be greatly to your profit, and we think that we have an interest in the use of that labor-saving device, too, as far as the effect on our membership is concerned." I am just thinking of a factual case that I once arbitrated.

The union says, "We have men that have been in your employ for 20 or 25 years. They are going out as a result of this machinery. They have no great prospect of employment at their ages. We want to negotiate severance pay for them."

The employer refused, and the strike resulted. I will be frank with you. I held it was a perfectly arbitrable issue. But, should it have been my position that was not an arbitrable issue?

Mr. JOHNSTON. Senator, mediation cases, like hardship cases, make bad law sometimes. I think it is a pretty difficult thing to say to an industry that, "You are to be penalized for making the maximum progress in the line of the public welfare to take care of a hardship situation." That is for you gentlemen to determine, how far you think a matter of that sort is a legitimate function of wages and working conditions.

But, I should say that the economic result of that contention would be a drag against the introduction of labor-saving machinery, and that if we had followed that suggestion, if the coal industry had followed that suggestion in its competitive desire to increase the production per man-day, we would today have been in the the state that England is with reference to a lack of mechanization and modernization of the coal mines of the United States.

It has been against great resistance of the mine workers that they have put in cutting machines and loading machines in many areas, and if they had been burdened with the low margin of profit which they have always had because of competitive conditions, with any such burden as that it might have turned the scale against modernization which has been so drastically in the public interest.

Senator MORSE. I understand that point of view. I had it before me. But, I bring this up as a specific example of the type of problem we reach in what I call these border-line cases between out-and-out independent rights on the part of management to do just as it pleases

as far as management is concerned, and the twilight zone where the risk of employment is pretty important to the individual employee. To go along in faithful service for 20 or 25 years and end up with a labor-saving device that is certainly going to be—or they would not use it—of great profit to the employer, and take the position that that employee has no right to at least ask for negotiation and then collectively fight for severance pay, I think, is a little hard.

Mr. JOHNSTON. Well, isn't that probably a function of the general problem of compensation for unemployment and of retirement, and might not that well be a factor, since the employment is more in the interest of the general public than it is of any particular employer, not to penalize them but to encourage him? I feel that by that course of action, the public gets the benefit, more so than does the employer.

Senator MORSE. I do think that it is a factor when you come to arbitrating those cases, what your reward would be in total amount; but I do not think it is an exclusive factor that makes the issue non-arbitrable.

I think—and this is, you understand, only my personal view—that if you take that position in those cases, then I do not think there is much chance of working out a very cooperative arrangement between the union and the employer, if the union had to take the attitude, "Well, you will bleed us and let us out in the cold."

I thought I would point it out from what I call border-line cases, and it might be pointed out by, for instance, taking the matter of the number of employees that the employer shall employ on a particular process.

Let us eliminate for the moment the safety factor, which I agree with you is clearly a working condition, but relating it to the speed-up. You can reduce the number of employees in a given operation.

Now, if as you say is the case, it is the right of management to insist that the workers shall perform the work as ordered and that the employer can without question do that, so long as safety is not involved, then you might be confronted, as an arbitrator, with this matter of speed-up in that industry.

What I am trying to point out is that I do not think that it is so very easy to say that this is or is not the right of management in a vast multitude of these borderline cases. They are all mixed up, there you get mixed questions of management and labor.

And I do say that although it is all right to say that so-and-so is clear-cut and simple, in practice it turns out otherwise. And, I can say in this list of yours, just change them a little bit and it becomes very questionable whether you have there one of the clear rights of management—at once the problem becomes complicated and involved.

Mr. JOHNSTON. Well, Senator, that was merely illustrative and that was wholly without any relation to the bill. As Justice Holmes has said, in many cases it may be difficult to define the line but it may be very easy to determine which cases fall on one side of the line and which fall on the other side of the line.

My attitude is that in approaching a matter of this character, that your committee should be certain that it finds the right side of the line, from the standpoint of the principles which are being contended for here.

Senator SMITH. Some concerns, I understand, try to set up labor-management committees for the purpose of dealing with borderline cases, with the idea that thereby they may get more easily the cooperation of the workers and thereby also get the workers to understand the better what the problems are.

But, apparently, in your industry, you do not have labor represented in those discussions. Now, how do you deal with these problems? I think the question of Senator Morse is a very important one.

I have thought myself, many times, with reference to labor-saving devices which will perhaps throw a lot of men out of employment, and the men thrown out are usually the older men who cannot secure new jobs, and who cannot get retirement, I have often felt that there is something wrong, something that ought to be corrected.

Mr. JOHNSTON. Well, Senator, that is true, and a lot of it is due to the impersonality of management in big companies, and that is a matter of common understanding.

Nevertheless, I will say—and I am not saying it critically, that that is not all—I am saying that the union has become infinitely less personal in its attitude than the employers ever could be. I say one of the greatest disasters to the cause of labor peace and understanding has been the ruthless action of the National Labor Relations Board in crushing the development of the affiliated union or the local union and the common interest, the common economic interest and the common understanding between the personnel at any given plant and the management. It is—and I can speak absolutely from my limited experience over some years—been destroyed beyond repair. Management does not know where to begin to restore it.

Management can do nothing. It cannot move. It is looked upon with suspicion if it undertakes anything in that direction.

Senator SMITH. You think, then, that this state of affairs which I have referred to before other witnesses preceding yourself as “family relations” in a small plant, the relations between management and labor which existed in those small plants, have been destroyed by these changes that have been put in or enforced by the larger unions?

Mr. JOHNSTON. It has been exterminated.

Senator SMITH. That is a very important point. I should like to see that family relationship intensified, rather than see us getting away from it. I think it was a good thing to have. And, I think, too, that having that family relationship with the worker is the only way you have of getting more production from that worker.

Mr. JOHNSTON. Absolutely. Absolutely. And that is the reason why we are so much concerned with the destruction of that relationship, that feeling for the welfare and well-being of those associated with oneself. I think that was something that no one could really object to. And when the individual operator is deprived of the ability to consider that with his own men, consult with them on problems which are also related to the problems of the community and the people—why, you have just destroyed that sort of thing today beyond hope of restoration; you cannot bring back that kind of peace.

Senator SMITH. And that is gone.

Mr. JOHNSTON. Absolutely, and I think nothing could have been better. Furthermore, I think that our system cannot survive in face

of the attitude of armed hostility which has been arbitrarily injected into the relationship.

Senator SMITH. I agree with you. It seems to me that we have intensified this feeling of opposition and have put more barriers between labor and management by the arbitrary setting up of rules that prevent management and labor from getting together in their relationships. I am greatly interested and concerned in your point there.

Mr. JOHNSTON. That is right. Well, let us look at this—I am sorry to take up so much of the committee's time—but let us look at it this way. Let us take this case.

Why should there be any objection or opposition to the friendly aims of a company in the way of a meeting hall being provided by the company, with comforts being furnished; what objection to such things as heat, light, literature, technicians brought in there to talk to his people?

Why should there be any objection if a majority of the workers at that plant, in a fair election—not a fraudulent or forced election—a fair election which might be carried on by public authorities, say, “We want that union; we want that relationship”?

What right has the National Labor Relations Board to come in there and find something momentous in that; what right has it to destroy such a thing as that beyond any possibility of restoring it?

Senator SMITH. What you mean by that is that you would like to see secret elections on the question of whether or not they want an independent union or a company union; that they should determine that by election?

Mr. JOHNSTON. Precisely.

Senator SMITH. As well as a national union.

Mr. JOHNSTON. Or, rather than a national union, if they so elect. And such things as technical contributions being furnished; those things are the bases of friendly contact and reaction. To say that they are evidences of domination, and that, therefore, some union 1,000 miles away should come in and dictate the policies—

Senator SMITH. Well, of course, there have been abuses; you will concede?

Mr. JOHNSTON. Oh, yes.

Senator SMITH. And they are abuses that arise or have arisen from that sort of arrangement.

Mr. JOHNSTON. Oh, yes.

Senator SMITH. I think you must admit that in the history of those things there have been abuses and domination.

Mr. JOHNSTON. That is right.

Senator SMITH. But, I know what you are driving at, and I do believe that that type of family relationship is all-important in this picture.

Mr. JOHNSTON. If it were restored, then I think it would mean the beginning of a new era and I think it should be encouraged.

Senator SMITH. Go ahead, sir.

Mr. JOHNSTON. I return to my prepared statement.

Familiar illustrations of labor-union exactions having no lawful relation to wages and working conditions, coerced by strike or threatened strike are the Petrillo formulae requiring payment for work

not done or compulsory employment of unnecessary and uneconomic workers and the exaction of royalties on production and sale of articles, as well as the Krug-Lewis collective-welfare plan.

A strike, for instance, to force a theater to employ musicians was recently held illegal in Michigan as an unlawful labor objective.

The strike to enforce use of union materials is a familiar instance of illegal interference with the function of management.

All of these usurpations or attempts to usurp the functions of management should be blanketed under a provision excluding them from the sanctioned labor dispute and strike.

Now, as to the legal responsibility of unions and members.

The coal industry, in common with all others, asserts the necessity for legislation not only imposing effective legal responsibility on unions for breach of their contract committed or sanctioned by the unions and for unfair labor practices committed or sponsored by the union, but also providing that individual members who join in such breaches or unfair labor practices should be responsible.

The time is past for irresponsible anarchy in labor relations and the day is here for unions and their memberships to become, and recognize that they are, a responsible factor in the industrial economy, or get out.

A certified or recognized union which cannot prevent its membership from committing substantial breaches of union contract or unfair labor practices necessarily undertaken or implied in union contracts should accept responsibility for the results and be subject to the termination of all benefits under the agreement, at the option of the employer.

The coerced closed shop: The closed or union shop——

Senator SMITH. S. 55 has some provision made for that responsibility, but we have permitted recovery of union assets and we did not attach it to individual workers.

Mr. JOHNSTON. Well, I think that the responsibility of the individual workers should, of course, be limited to those who actually actively assist in such an action and commit that action in violation of the law.

Senator SMITH. Well, sometimes these fellows have to do what they are told to do. I am very sympathetic with the worker who is told what to do and has to do it. I do not think he should be visited with personal punishment such as happened in the Danbury Hatters case, where it was levied on the real property, the homes.

Mr. JOHNSTON. Yes, Senator, that is real coercion, when he joins under those circumstances.

Senator SMITH. Really, we should afford him protection. What we are groping for here is a bill of rights for the workman, because he has in the past been badly treated by the employers, and today he is badly treated by the unions.

Mr. JOHNSTON. That is correct.

Senator SMITH. And he is on the spot both ways; and what we want to do is get him out from under.

Mr. JOHNSTON. That is right.

Senator SMITH. And I want him to be perfectly free.

Mr. JOHNSTON. Correct.

Senator SMITH. He is entitled to that freedom, especially in his collective-bargaining position.

Mr. JOHNSTON. That is right.

Now, with reference to the coerced closed shop, our position is that the closed or union shop is a violation of the principle supposed to be furthered by the Wagner Act that employees shall be free to select, join or not join, a union.

It is affirmatively asserted in the Norris-LaGuardia Act that the individual worker should be free to decline to associate with his fellows and the assertion is solemnly made by Justice Black, speaking for the Court in *Hunt v. Crumbock* that this is a fact. It may be the law but it is not a realized fact.

It is to be doubted that an individual employee (much less 49 percent of the employees) of a plant can be lawfully coerced to delegate his right to bargain with respect to his own labor to an agency imposed upon him by other workers. The point made here is that the matter of closed-shop agreements should not be coerced on managements by discriminatory sanctions surrounding the strike.

It seems basically untenable that in order to get or to keep a job any free citizen should be compelled to subscribe to closed-shop formulae or to conditions imposed not by his employer or the job, but by some labor group or dynasty. The closed-shop agreement is invalid at common law where it compels the employer to discharge an existing employee and closed-shop agreements covering an industry of considerable proportions in any community or area have been held to be, as they conspicuously are, contrary to public policy. The closed shop is also expressly prohibited by the Railway Labor Act.

Labor union demands for a closed or union shop monopoly should be excluded from the objects sanctioned for compulsory bargaining or "labor dispute" for which a strike is sanctioned, and it should be affirmatively made an unfair practice for any labor union or employee to demand or take action to coerce a closed or union shop.

Now, we do not mean for one moment to suggest that the close shop should be declared illegal in this phase of this matter, where it does not involve an attack upon the rights of the individual employees in their plant, where he himself must get out.

We think that it is in order for the employer and for the union, as a voluntary matter on both sides, if the closed shop is plainly contributory to the economic interests of the public and shop, we think that is justified. For instance, where a union undertakes to supply, and guarantees the supply of the necessary workmen in any particular line, it is clear that that might be a reason why they might ask for it, both sides, and why the employers could voluntarily accede to it.

But the objection I have throughout this entire comment on the closed shop is this, it should not be coerced by sanctions which Congress has, for different purposes, thrown around collective action throughout.

Senator ELLENDER. Well, the law does not enforce the closed shop.

Mr. JOHNSTON. No.

Senator ELLENDER. And you think, do you, that ought to be left to collective bargaining?

Mr. JOHNSTON. It ought to be left to collective bargaining, and not coerced by such sanctions as the unlimited right to strike.

Senator ELLENDER. Well, would you have it in the law to prevent striking if that be the demand?

Mr. JOHNSTON. I would. I would, undoubtedly, because in that instance I do think that the strike is against the Constitution, against the fifth amendment, it is to further the dynastic position of the union. I think that is not a legitimate right, not one for which we should sacrifice the fifth amendment, simply to aggrandize the dynastic position of any particular union.

Senator MORSE. I want to make sure I clearly understand your position, Mr. Johnston, and I shall try to do that by asking you a question.

Mr. JOHNSTON. Yes, Senator.

Senator MORSE. You do not deny the right of the employer and the union to enter into a voluntary agreement for a closed shop, if that is their preference?

Mr. JOHNSTON. Subject to the other laws which may be affected by it.

Senator MORSE. I understand.

Mr. JOHNSTON. Then, that is correct.

Senator MORSE. That is, if employer A and union B decide they would like to work together under a closed-shop agreement, you think they should have the right to do that, if they want to enter into it voluntarily?

Mr. JOHNSTON. I do.

Senator MORSE. Now, assume that if they do enter into such an agreement, it is found that employees 1 to 50 working in this shop do not want to join that closed shop.

Mr. JOHNSTON. I see.

Senator MORSE. Of course, those 50 employees should be protected.

Mr. JOHNSTON. That is right.

Senator MORSE. But, at the same time, the employer and the union, both, have the right, as to future employees, to require membership in the union? Do you agree there?

Mr. JOHNSTON. I do; that is absolutely correct. And I think that when it has been entered into, then violations of the closed-shop agreement should then be actionable at common law. Also, it should be actionable if there is engaging in or participation in any arbitrary action that destroys that arrangement that had been voluntarily made and going on a voluntary basis. That voluntary freedom extends to both the employer and employee, the employer should be secured against attacks instituted by outside labor parties, he should have some protection through his closed shop, that closed shop should not serve as an instrumentality of an attack upon him from outside. And the employee should have protection, also; the union should not deprive him of any of his freedom of action.

Senator MORSE. Now, in the third place, as I understand your statement, you now believe that labor should have the right to strike for a closed shop?

Mr. JOHNSTON. That is exactly it.

Senator SMITH. No; the contrary.

Senator ELLENDER. I understand you do not, that you are against it.

Senator MORSE. I am sorry; that is what I mean to say, that you do not believe labor should have the right to strike for a closed shop.

Mr. JOHNSTON. That is right. I misunderstood.

Senator ELLENDER. Mr. Johnston, do you know of any strikes of any consequence held in recent years due solely to or solely caused on the ground that management refused to a union a closed shop?

Mr. JOHNSTON. Well, many strikes have been——

Senator ELLENDER. I meant in the coal industry.

Mr. JOHNSTON. No, No; I do not think so.

Senator ELLENDER. I did not think so; I have never heard of any that I can recall.

Mr. JOHNSTON. No; I do not believe there have been, but these gentlemen sitting over there [indicating] could probably correct me if there have been such strikes.

Senator MORSE. Well, what about the disputes that led to arbitration of the closed-shop issue in the coal industry?

Mr. JOHNSTON. I should like to confer with some of these interested parties here.

Mr. JOSEPH F. JOHNSTON. There was the captive mines.

Senator SMITH. What is your name, sir?

Senator ELLENDER. Let us have your name for the record.

Mr. JOSEPH JOHNSTON. I am Joseph F. Johnston, lawyer, Birmingham, Ala., and the son of your witness.

Senator SMITH. What were you saying?

Mr. JOSEPH F. JOHNSTON. I am advised by some of the gentlemen sitting at the side of the room here that the captive coal mine strike of 4 or 5 years ago did involve the closed-shop issue only.

Mr. JOHNSTON. That is correct. I overlooked that one.

Senator MORSE. If I am not mistaken, Mr. Johnston, on Pearl Harbor Day, an arbitration award came down, settling thereby what threatened to become a very serious strike.

Mr. JOHNSTON. That is correct. I remember that very definitely, now.

Senator MORSE. And, I judge from your remarks that you do not think the closed shop is an arbitrable issue.

Mr. JOHNSTON. That is correct because I think that is a function of the free right of the determination of managerial policy.

Senator MORSE. Suppose—and I have asked this question of other witnesses—that the employer and the union, not being in agreement on the closed-shop issue, go before an arbitrator and say, "We are not in agreement, but we are willing to submit to you our evidence and our respective positions and we will subject ourselves to your judgment over ours."

Now, do you think that by such action it could be made an issue for voluntary arbitration?

Mr. JOHNSTON. I see no reason why it could not be, subject to liability under common law or statute.

Senator MORSE. I asked that because you stated it was not arbitrable and your reason seemed to be that it ought to stand on complete freedom of contract.

Mr. JOHNSTON. Correct.

Senator MORSE. And I agree with that as a proposition of law.

Mr. JOHNSTON. I proceed with my statement.

This necessity is the more urgent in the light of the pending campaign by the mine workers' union, threatened also horizontally by other unions competing for prestige, to perpetuate themselves economically beyond all possibility of rivals and even beyond the reach of the Government itself by forcing tonnage taxes and other profit-sharing levies, making independence of any worker or transfer of his allegiance impracticable.

It is clear that on every theory consistent with the individual's constitutional freedom of contract the closed or union-shop formula is out of bounds as a compulsory exaction.

The "no contract—no work" formula: Mention has been made of the "no contract—no work" formula or slogan. This is repeatedly used by scattered locals of the mine workers' union to coerce agreement while their representatives are bargaining. The formula is an established part of central union strategy, and constitutes a continuing threat of a general strike.

It is plainly contrary to public policy where reasonable effort to negotiate has not been made or where negotiations are scheduled or in progress. This threat, in the nature of a time bomb, could be removed from the sanction of Federal laws by a provision that before any strike can be called by a union or collectively instituted by union members:

Reasonable notice and specification of the demands should be served in writing on the employer and reasonable time given for negotiation;

No strike shall be called or engaged in while the strikers' representatives are in the course of negotiations;

No strike by members of any union having a contract should be sanctioned where not affirmatively approved by the union and otherwise consistent with public policy.

This protection would be afforded by the various provisions under consideration requiring a reasonable waiting period after notice of intention to strike.

Senator ELLENDER. Mr. Johnston, let me interrupt. Do you think it would be practical either to have it written into the law or placed in the contract that at a certain period of time before the termination of the contract that the union or management should give each other notice of any changes of amendments to the then-existing contract?

Mr. JOHNSTON. Well, that is a common provision in contracts, Senator.

Senator ELLENDER. Well, I ask, do you see any objection to making it legal, putting that into the statute itself, forcing management and labor to put it into the contract? Would it be practical, in other words, in your opinion?

Mr. JOHNSTON. Senator, I shrink not from the results which you suggest, but I shrink from any such statutory compulsion in an agreement between industry and—

Senator ELLENDER. Well, why?

Mr. JOHNSTON. Well—

Senator ELLENDER. What is wrong with that? What would be wrong in declaring to each of them that within, say, 60 days or 30 days before the contract is to expire, that they shall give notice of

change or amendment? Why shouldn't they say within that time to each other, "We will give you notice that we propose so-and-so"—and during that period of notice certain things shall be done either to reform the contract and amend it, or to otherwise correct it, why wait until the last moment or last day of that contract before letting that "No contract—no work" formula come in? Why shouldn't they take care of the situation in advance?

Mr. JOHNSTON. Senator, I know what you mean, I get your point on that advance period for renegotiation for a new contract, and when I say I do not favor it, it is not because there is no evidence of lack of ability to agree.

I say that should not be done because the moment you put a statutory detail like that in an agreement—it looks innocent and it has definitely a good purpose, but in actual experience, because of the enormous complexities of these things, it very often winds up this way, that one or the other of them will run afoul of that statutory provision. I would think of it as an added strain upon the elasticity which I would like to leave in those matters.

Senator ELLENDER. We have had any amount of evidence given to us in the Seventy-ninth Congress to the effect that management would not attempt to bargain collectively.

On the other hand, management witnesses have come in and they have said that labor will never try to bargain collectively.

Now, the thought that I had in mind was that the way to accomplish realistic collective bargaining might be to force both management and labor to do something about it either in the contract itself, or to have it in the law, whereby they will confer within a certain period before the expiration of the contract.

Now, what is so wrong with that?

Mr. JOHNSTON. But, you could not force them into the contract, you see, Senator, you could not make them enter into the contract.

Senator ELLENDER. I do not mean to enter into a contract, I mean to amend existing contracts before strikes take place. I would have it so agreed that before any strikes or stoppages can take place or lock-outs be effected on management's part, that certain provisions were to be met and we would have these provisions spelled out in the agreement itself, or in the law.

Mr. JOHNSTON. Well, if you would not thereby be adding rigidity—

Senator ELLENDER. Well, it should not have that effect. It would be a simple provision stating that 30 days before a contract expires, management shall notify the employees of any dissatisfaction; and if labor is not satisfied, then it shall notify the employer.

Then, during that intervening period, efforts are to be made to amend the contract to suit both parties and no delay permitted until the expiration of the contract before some decision is reached.

Mr. JOHNSTON. Senator, that provision is in every union contract with which I am familiar.

Senator ELLENDER. Well, if it is, let us suppose some do not have it. What would be the objection to making it apply to all collective-bargaining contracts? One of the strong reasons for it, as I see it,

is to make both management and labor utilize the facilities Congress has provided them in order to settle their difficulties.

Mr. JOHNSTON. I do not believe that that would be as effective as a waiting-period provision, Senator, and such provisions are in most of these bills.

Senator ELLENDER. You mean, wait until the contract expires and then act?

Mr. JOHNSTON. No. Let them have free negotiations, but see that they don't carry it to the point of a strike until there has been a waiting period, and make every effort to conciliate the differences, on any theory of action you may wish to agree to.

Senator ELLENDER. Well, that is what I am talking about, exactly, is it not?

Mr. JOHNSTON. But a provision of that sort would not displace the necessity or the desirability of your considering some waiting-period provision.

Senator ELLENDER. No; but in these waiting periods that are provided for in some other bills, there is no attempt made to settle the matter within the life of the contract, as the provision I propose would do.

The idea I have in mind would be to make it certain that both labor and management utilize the facilities that we are providing for them under law, within the period stated in which they should notify each other of any changes or any amendments to be made in the contracts presently existing.

I wish, sir, that you would read the provisions of the bill I refer to, S. 404.

Mr. JOHNSTON. S. 404?

Senator ELLENDER. Yes, sir; S. 404. You have a copy of it. I wish you would read it and, if you would be good enough to write in your views on that, I would appreciate it and I think the committee would, also.

Mr. JOHNSTON. I would be delighted to do that, Senator.

(Mr. Johnston's comments subsequently were filed with the committee.)

Mr. JOHNSTON. Now, very briefly, Mr. Chairman, I shall refer to unfair labor practices by unions.

The practices requiring congressional action scheduled above should not only be excluded from the permissible objects of collective bargaining, labor dispute, and immunity from injunctive process sanctioned by Federal laws, these practices should be scheduled as unfair practices on the part of unions and their members and appropriate penalty of disestablishment or loss of representative or employee status should be declared, probably taking the form, let us say, of suspension for a particular period.

Any board required to declare or make reparation for unfair labor practices by employers should be required to hear the complaints of employees, but no such provision should suspend the employer's right of action for recovery or injunction for action by the union in prosecuting the unsanctioned demand or labor dispute.

Now, with reference to State legislation. There is no good reason why Federal policies should interfere with the traditional evolution

of American economics through the play and experiment of State policy. The Wagner Act, Clayton Act, and Norris-LaGuardia Act should be amended or supplemented by a provision that nothing in the acts should be construed as suspending or superseding any right of the States, otherwise existing but for the Federal statutes, to adopt measures regulating unions and union members or subjecting them to liability for strikes contrary to the laws or public policy of such States.

This provision should be in general terms and broad enough to allow the several States to adopt legislation as to closed shops; union accountability; to regulate the administration of voluntary welfare, pension or retirement funds; and, in general, to adopt legislation in accordance with the traditional operation and development of the American Federal system.

The greatest assurance of ultimate solution of labor relations wrecked and demoralized by Federal law is to permit the States reasonable freedom of experiment.

Horizontal and exclusive legislation by Congress tends to destruction of small business and the arbitrary establishment of national standards and remote controls notwithstanding radical local differences in economic conditions and in the conduct and economic value and responsibility of labor unions in various States.

This elasticity is an obligation of Congress in view of the revolutionary extension by the Supreme Court of the conception of interstate commerce. The Court's radical departure from decisions established for a century threatens this process of experiment and proof in local matters, and at least calls for disclaimer by Congress of any intent to cripple State legislation in this field.

This principle is particularly essential to coal because of the radical diversity in conditions and in the economics of the industry.

Senator MORSE. I think that is a very important point you raise, Mr. Johnston, and I would certainly want to get your ideas on it before entering any judgment on it. It was suggested by a witness this morning, too.

The question I would ask you is this: How far do you think the Congress should go in delegating to the States its power to regulate interstate commerce?

Mr. JOHNSON. Just this far, Senator—all that is practicable and all that is necessary. Let them go as far as they could, and only as far as they could had not Congress entered the field.

In other words, the States could not under that status enact any law that was an impediment to or would interfere with interstate commerce. It would be merely a declaration that—a declaration to the States, "By our experimental approach to this subject we do not intend to interfere with the constitutional assertion by the States of their authority over these local details."

Now, then, it may be and it will undoubtedly be contended, as it has been contended, that any such approach by the State, which has been, because of its experimental fashion, so invaluable in any of these almost insoluble problems which underlie our survival or the survival of our system, it will be insisted that Congress has taken and occupied that field and that the States must stand out of the way.

Now, you may be able to do that with railroads and agencies of essentially national location, but it just—why, I was appalled and forced to fully agree with many things that the very able Member of Congress stated when he said that in concentrating into a single board the administrative matters of the greatest particularity, with reference not to 7,000 mines over 28 States but with the entire American industry, that Congress could not create a board with the elasticity necessary, without insuperable delays and drags and with a mechanism sufficiently able to deal with the entire American business economy through some central board here in Washington.

Nothing could contribute more to giantism and to the destruction of small business than to force every difficulty into some centralized clearance such as the Court of Appeals of the District of Columbia or something of that sort.

It would be just impossible to imagine any such centrifugal and necessarily arbitrary set-up being put into effect. I am appalled not at the intent but at what would be the effect.

Senator MORSE. You think, then, the setting up of a national mediation commission with the procedural requirement that in the case of a dispute between employer and labor that involves an interstate commerce business, a requirement that it would be necessary to have a certification from the United States conciliator that the dispute in fact exists, you think that would result in a tendency for us to substitute, for collective bargaining between employer and labor, a Federal regimentation of our economy?

Mr. JOHNSTON. I think inevitably that is the result, because—well, now, an office building that houses an arbitrary percentage of people whose business is interstate is, in itself, in interstate commerce. I do not know where you would draw the line.

As Justice Holmes said, it is realized that there may be rules that may be available for that kind of process, but where are you going to stop it?

Senator MORSE. Then, my suggestion of this morning was not very far wrong when I raised the question as to whether 30 mediators could do the job, and suggested it would have to be 10,000?

Mr. JOHNSTON. I think your 10,000 estimate is very conservative.

Senator MORSE. I am a very conservative fellow. [Laughter.]

Mr. JOHNSTON. Well, now I don't doubt it. But, seriously, we have got to be realistic about this. With the best intentions on earth and working under the finest theory you can find, you just cannot solve your labor disputes through any such central—shall I say—orifice as that, without choking the whole process. And, the small man would be wholly lost in any such technique.

Senator MORSE. And I, in all seriousness, raise this point: You are concerned, and I certainly am concerned, with the very real dangers that are presented by our American labor relations today; I am concerned about those dangers.

We may, we realize, settle those problems. However, we may do so at the cost of setting up Federal machinery so complex in nature that American industry might find itself in a few years, because of the laying down of regulations and procedures and precedents, highly regimented, under such Federal control.

Mr. JOHNSTON. That is the inevitable result.

Senator SMITH. I gather from your statement of your position that the question of picket lines and violence in States should be purely for State action and not for Federal legislation.

Mr. JOHNSTON. Well, so far as they are matters of the peace, I think that is right. There should be a screening process. Congress should not undertake to provide formidable machinery for every strike that, technically, takes on interstate characteristics or occurs in every industry that, technically, might be considered an interstate business.

You have got to screen them, and leave to local handling those matters that fully and adequately can be handled by the local people. But with regard to principles referring to and touching upon such basic things as the public welfare—well, Senators, that is the final subject in my statement, and if I have not already intruded too long upon your time, I should like to read that to you.

Senator SMITH. Go ahead, Mr. Johnston.

Mr. JOHNSTON. With reference to strikes declared or found contrary to public welfare, we say this:

While there is a constitutional right to quit employment where an employee not under contract does not like his job, there is no constitutional right either to bargain collectively or to strike collectively that is not subject to regulation or prohibition where rationally declared by law or found on hearing to be contrary to the public interest.

Congress can constitutionally and should immediately declare not only that collective demands by unions for contributions by the employer, for the pooling of employees, and for unionization of supervisory forces and interferences with the functions of management are out of bounds. It should withdraw all sanctions and immunities from any strike, whether outlawed or sanctioned by a union, that is called or maintained to further any demand (a) the object of which is affirmatively illegal or which is declared by statute to be ineligible for statutory bargaining, as not relating to wages or working conditions or violating the functions of management or (b) which, during a required waiting period, is found by public authority to be contrary to the public interest.

By that test is meant any strike which, if it succeeds in plant stoppage, will, as declared by statute or found by public authority, (a) deprive a substantial dependent public of necessary supplies or services or (b) will deprive any dependent industry or plant of materials or parts, the continuous flow of which would be likely to cause substantial idleness or be adverse to regional or national economy.

Senator SMITH. That is what you would call a national paralysis case?

Mr. JOHNSTON. That is right.

Senator ELLENDER. And you would require that without regard to what the demands might be?

Mr. JOHNSTON. That is right, where you have an ineligible subject.

In short, where a strike would affect only the contestants, let it proceed by lawful means for any lawful subject matter of wages or working conditions, but where its direct or necessary impact is against innocent third persons or the general public within its intended scope, it is inconceivable that the public interest must continue to be sub-

ordinated and sacrificed to the strategy of individuals and groups which have so repeatedly demonstrated callous indifference to the public welfare.

Unless so limited, the term "public policy" as recited in the preamble of present Federal laws is both fraudulent and vicious. Congress cannot assert that public policy warrants action hostile to public welfare or that the determination of public welfare is to be delegated to the dominant factors in American labor who have not hesitated to strike or threaten to strike without regard to public consequences. It is only since these hearings began that the voice of the turtle has been heard in the land.

These observations are not intended to be academic. I intend to relate them to existing problems and the certainty of strikes and economic disturbance on an extended scale unless this Congress shall take action and take action now.

Nor will removal of superficial or subcutaneous defects in the Wagner Act stabilize our economy. There have been, of course, discriminations in favor of central unions and against industry managed by the Board under every section of the act.

In one single hearing the Board arrived at its conclusions by coolly announcing in 65 consecutive instances that the Board elected to disregard the testimony of a number of witnesses testifying for the company as unworthy of belief. Nor does crime or pornographic indecency seem to the Labor Relations Board to be an acceptable ground for discharge where a belligerent union official is involved. These infuriating vices of administration have been encouraged by the act and Congress should remedy them, but those changes are not enough.

If Congress is misled by the current billing and cooing of unions and confines its remedial legislation to these minor vices in the Federal formula, it will find too late the American economy confronted with a devastating recurrence of hostility and strikes.

Coal has a rendezvous with the mine workers' union and if that union, for dynastic reasons, finds itself incapable of retreat from the Krug-Lewis formula, there is a dead moral certainty of strikes on a national or major scale unless Congress now limits the scope of sanctioned bargaining short of collectivist levies on corporate capital, and subjects strikes to a mesh that will strain off those which are found by public authority to be contrary to public policy, accompanied by a redefinition of that term as used in the Clayton and Norris-LaGuardia Acts so that it will be consistent with and not paradoxically hostile to the public welfare.

That is the end of my prepared statement, Mr. Chairman.

Senator SMITH. Any questions?

Senator MORSE. Just one more question and then I am through with the witness, but I should like to give someone else the opportunity to go ahead first.

Senator ELLENDER. Well, I was going to ask about that "voice of the turtle." [Laughter.]

Senator SMITH. Go ahead, Senator.

Senator MORSE. You heard Congressman Case's testimony this morning, did you not, Mr. Johnston?

Senator JOHNSTON. Yes; I did.

Senator MORSE. And may I judge from the comments you made a few minutes ago that you think, by and large, the machinery he proposes to set up goes too far?

Mr. JOHNSTON. Yes; it goes too far in one direction; and if that sort of machinery were to be set up, it would be wholly inadequate in another.

It will not do the job. It will put a crosstie on the rails of American industry and will lead to infinite centralization of our problems.

Senator MORSE. Do you think it will raise a good many enforcement problems?

Mr. JOHNSTON. I cannot conceive otherwise. It will raise an enormous number of them, and in time it will leave every problem which has a lag in the final determination in an utterly demoralized and hostile state.

It is somewhat like war. During the period leading to the declaration of war it is to the interest of the high command—in this instance the high command conducting the strategy for the miners—to keep and intensify every disagreement there is, to keep those disagreements going in order to facilitate the mobilization.

Now, I do not know the average time between the initiation of an unfair labor practice or similar procedure that would be involved in this machinery—but I have had experience with the present machinery, and I have had experience of cases where they did not reach the final conclusion for 4 or 5 years, and in the meantime the whole tension, as arbitrary as anything under the sun can be, is kept up, and I think it can be said that is laid entirely to labor, because management does not want it, that tension, whatever else you might say about them.

What I mean is this, that a desire for efficiency, if not anything else, has forced industry in every field to realize the change in economic conditions that has come about, and to realize the dollars-and-cents value of harmony and good will and continuity of employment, and above all they realize the efficiency which can only come from suitable plant relations with labor.

I say that if you struck every law from your books which we are now advocating, I do not have any doubt that if they could prevent it, they would never go through the same period of lack of harmony and understanding which brought about these immunities now extended to labor unions.

Senator MORSE. I am merely saying, in closing my remarks upon this witness' testimony, that I am very much impressed by this testimony, although I may differ with some of the legal conclusions.

However, I was not entirely facetious when I made my comment about my having a conservative approach to these matters, because I want to say that there is one principle that you, Mr. Johnston, have enunciated with which I am in complete agreement.

I put it into this language: That I think that man is a conservative who believes it is the responsibility of the Government only to set up minimum standards of protection and that the Government ought to keep itself out of the labor-relations field between employer and employee to the maximum extent possible, in order to preserve real collective bargaining in this country.

I think that the radical in America is the one who wants to set up a great variety and aggregation of Federal machinery to tell employers and employees what their relationships shall be and what those relationships shall mean.

I further think that following that radical course of action is going to result in so much regimentation in this country that within a very few years those who look upon fellows such as myself as "dangerous radicals" will come to realize that after all, we are the conservatives of America and that we have a pretty clear understanding of what we mean when we say: That governs best which governs least.

Mr. JOHNSTON. Senator, we feel sure that you are absolutely correct. We also now wish to assure our cooperative spirit toward this committee and we shall contribute what we can for your help to the full extent this industry can contribute, in order that we can aid toward the solving of not only our industry's problems, but the problems of our country.

Senator SMITH. I want to thank you, Mr. Johnston. You have made a very splendid witness and you have given us many important points to take under consideration—and we will consider them.

Now, I am not sure that I heard an answer from you on the question of national paralysis, how you would deal with that, unless you eliminate that from the bargaining area.

Mr. JOHNSTON. I think that depends a good deal upon the machinery which is available for the determination of conflicts where management and labor come to grips in a dispute which is a legitimate function for a strike, such as wages and working conditions.

As to the end result—undoubtedly, the suggestion has been often made and it seems appropriate on its face, that industries which are essentially national in their effects and in their mechanism, such as railroads, communications, and the like, that there might well be a difference in formula; that is a difference in formula for them as between them and small plants out in the fringes of industry.

It is for that reason that it is going to take a very careful analysis in order not to lose simplicity in dealing with these entirely different kinds of problems.

We have no doubt whatever but that there can be a decentralized and local-origin mechanism set up, not a mechanism of wandering bands of professional conciliators which always tend to come back inevitably to a national pattern.

You cannot start them out from one central source and recruit them there and mobilize them there; no matter how far out you may send them; they tend to become professional and to come back to that central point of origin.

We are certainly ingenious enough to find local sources, even if it were nothing but the designation by the district courts of a master who would be in an independent position in the community and who was not a professional. We could call these men in and say to them, "Follow out your procedure and see if you can't bump their heads together and get them to agree."

Then, if they disagree and persist in disagreeing, and if it be a matter which he determined as a referee—if it were done through some local authority of that sort—and if there was an impact against the

public interest that was substantial, it could further be dealt with, and you would have a screening out of the small or questionable cases, you could eliminate the inconsiderable cases on the local level.

In that way, you have got it localized in localities all over the country, and it is not cleared through a central place in Washington, where somebody can come in, to Washington, and, so to speak, keep the controversy alive.

Senator SMITH. I do not want to prolong this, but you have made a suggestion that is very interesting to me, because it happens I was working with Senator Ferguson on a program to set up labor courts, where you can have local people who can give immediate attention to labor problems; there would be no delay.

Mr. JOHNSTON. That is it.

Senator SMITH. And the jurisdiction would be limited to contracts; do you favor that?

Mr. JOHNSTON. That is right.

Senator SMITH. Or, the interpretation of contracts. .

Mr. JOHNSON. That is right.

Senator SMITH. Or the interpretation of labor law, to the end the thing could be decentralized, and to the end that they would try to settle those difficulties.

Mr. JOHNSTON. Yes; unquestionably, in the field of public welfare, while it is amenable to conciliation, when it comes to such questions as whether or not a strike has its impact on public welfare, the decision as to whether or not it is something that is no longer between the two contestants but does have impact on the public welfare—and that may be complicated, because sometimes the public can get from the competitors of that industry its necessary supplies—but where the impact is upon the public interest, then I say that the question of public policy and the standard of what is substantial detriment to the public is essentially a judicial question.

It is not one for a system of stereotyped or political boards the appointments to which are forced by the contending factors in the political equation. It should be nonpolitical.

We have got to take a new approach to bring about harmony and peace in industry or, to adopt the manner in which Mr. Churchill would say it, and paraphrase it, "We have got to look forward to the liquidation of the American system."

I thank you, Senators, very much.

Senator SMITH. Thank you, Mr. Johnston. The committee will now adjourn.

(Whereupon, at 4:10 p. m., the committee adjourned to 10 a. m., Friday, February 14, 1947.)

LABOR RELATIONS PROGRAM

FRIDAY, FEBRUARY 14, 1947

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D. C.

The committee was called to order at 10 a. m., in the Caucus Room, Senate Office Building, by Senator George D. Aiken, presiding.

Present: Senators Aiken (presiding), Ball, Morse, Ives, Thomas, Murray, and Ellender.

Senator AIKEN. The committee will come to order, and before we start with the witnesses who are scheduled for today, Senator Thomas wishes to make a statement.

Senator THOMAS. Mr. Chairman, as you know, both Senator Smith and I have to leave to attend a meeting of the Foreign Relations Committee in a few minutes, and as all members of the committee know I have for a long time taken this position: that a law will not change the troubles or better the conditions of labor and industry, as we are practically through that condition at the present time.

Mr. Harold Story is to be a witness here, and I am sorry that I cannot stay to hear him. He represents the Allis-Chalmers Manufacturing Co. I was going to question him along just one line, and that was whether law would remedy the condition in regard to the strike, or would it not. I have asked a friend of mine to write me the story of the Allis-Chalmers strike as he saw it. I cannot vouch for this story, because I was seeking information, but I will ask that this story, this statement that has been sent to me, be printed in the record.

Senator BALL. May I ask the source of it, Senator? Will you identify it?

Senator THOMAS. No, I do not care to identify it. I would rather not identify it. I don't want to get into a controversy over it.

Senator BALL. I just wondered whether the author of it was a member of the union or an outside observer, or just who he was.

Senator THOMAS. I don't know about that.

Senator AIKEN. Without objection the statement presented by Senator Thomas will be printed in the record of the hearing at the conclusion of Mr. Story's testimony.

(The paper referred to appears hereafter.)

The first regularly scheduled witness for this morning is Mr. Cecil B. De Mille. Mr. De Mille, will you take the witness stand? Before you begin, I understand that you would like to complete your testi-

mony uninterrupted and then will be ready to answer any questions which may be asked of you by the members of the committee.

STATEMENT OF CECIL B. DE MILLE, HOLLYWOOD, CALIF.

Mr. DE MILLE. I would prefer to complete my statement without interruption, Mr. Chairman.

Senator AIKEN. And before beginning your presentation will you advise the committee whether you are appearing for yourself or as the representative of some organization?

Mr. DE MILLE. I am not appearing as a representative of any organization.

Senator AIKEN. You may proceed with your testimony, which we will ask not to be interrupted until you have concluded, and then questions may be asked.

Mr. DE MILLE. Mr. Chairman and members of the committee, I thank you for this opportunity to present my views on the all-important subject of labor relations.

The American workman is regarded as raw material both by business management and by labor management. Congress must give the workman protection from both. His civil and political rights must be protected. He looks to this Congress to protect them. The average American workman is a real American. He wants his home and his children to be American. It is up to this Congress to restore his freedom as an individual and as a free citizen.

In the words of a writer sympathetic to labor, the life of every person in the United States, whether engaged in business or the professions, whether a politician, housewife, farmer, or worker, is affected in some way by the existence and activities of labor organizations. No domestic problem is more important to the general welfare of the United States than the problem of labor relations. The people expect the Eightieth Congress to make such laws as are necessary and proper to hasten the solution of this problem. Legislation alone will not solve it. It must be solved by labor and management bargaining in an atmosphere of freedom and equity, but that atmosphere is lacking today because the present laws and recent Government policies have produced unfreedom and inequity.

New legislation can and must right these wrongs. Where a bad or mistaken labor policy has produced chaos, a new policy can and must produce order.

I do not hold a brief for either management or unions. My brief is for the American citizen as a human being. I am not a big businessman. I am a union member who has had some personal experience of the union's power over its members. That experience and a citizen's interest in the general welfare of the United States are my only credentials before this committee. In a democracy these credentials are sufficient.

I am a member of the Screen Directors Guild. I am a member of the American Federation of Radio Artists, known as AFRA. I have been a member of AFRA since it was organized. Under AFRA's union-shop contract with the radio industry, every radio artist is obliged to join the union in order to work at his profession.

In 1944 my local of AFRA levied upon all its members an assessment of \$1 to finance a campaign against a proposition appearing on the California ballot at the general election of that year. I personally favored the proposition. I refused to pay a dollar to oppose my own convictions as a citizen. For this adherence to my political rights I was suspended by AFRA, and under the provisions of the union shop I was prevented from appearing on the radio program which I had produced for more than 8 years. Because I refused to pay a political assessment, I was deprived of the right to work.

I am not seeking from this committee a judgment on my individual case. I am stating it as one example—one example among many that could be adduced to show the power a union has under the closed shop or union shop.

There is no need of a fact-finding commission to spend months discovering facts that are clearly apparent to every Member of Congress and every citizen of the United States. Today, not tomorrow, is the time for Congress and the Nation to face the issues raised by the closed shop. The evidence is in. Neither Congress nor the Nation has anything to gain by delay. The only question is, Can the closed shop be regulated so as to protect fully the freedom and rights of the individual worker, or do the worker's freedom and rights demand the abolition of the closed shop? I am confident that if this committee is convinced that its choice lies between the closed shop and the freedom and rights of American workers, it will without hesitation recommend that the closed shop must go, and I make no distinction between the closed shop and the union shop because the effect upon the individual worker is the same in either case. His right to work is made dependent upon membership and good standing in a union, and it is for the worker rather than for the employer that I am appearing before this committee.

I propose to show, first, the closed shop is a monopoly. That the closed shop is a monopoly of labor is self-evident. A monopoly is defined as exclusive control of a supply of any commodity or service in a given market. I am not here primarily concerned with the monopolistic aspect of the closed shop as it affects the employer or the industry in question. Much could be said about this.

In my own industry, motion pictures, for example, there is no doubt that the closed shop practices are keeping fresh and needed talent out of the industry. I could cite instances from my own experiences. For more than 30 years I have felt it part of my duty to motion pictures to give a hand and a start to creative young minds. More than once recently I have found that I cannot do that any more in certain fields where the union has decided that seniority is a substitute for talent. But here and now I am concerned with the monopolistic effect of the closed shop upon the individual worker. It monopolizes his right to work. This fact is established by a decision of the Supreme Court of California which is quoted in my brief. My union, the American Federation of Radio Artists, is an example of a labor monopoly. It has an industry-wide contract under which no one can work as a radio artist unless he joins AFRA and keeps in good standing in the union. I cannot work as a radio artist anywhere in the United States where AFRA's contract is in force, because I refused to pay a political

assessment. When a man's right to work depends upon his submitting to such an imposition, the union's monopolistic power is too apparent to require further proof.

Our American tendency and tradition is to restrict monopoly to areas where it is absolutely necessary, and keep all other areas open to free enterprise. American public policy is antimonopoly. This policy should be invoked against any monopoly of the right to work. In Teller's words, the right to combine in proper cases for mutual protection is one thing; the right to monopolize is quite another. I agree with Teller. Coercion and collective bargaining are two different things. There is a difference between an agreement and a hold-up.

The only way to end this unnecessary and dangerous monopoly is to abolish the closed shop.

Second, the closed shop is undemocratic. Under the Wagner Act, a union is certified as collective bargaining agent for any unit of industry when it represents the free choice of a majority of the workers in that unit. This is a reasonable and democratic procedure. But the advocates of the closed shop go further. They demand—and recent Government policy has supported their demand—that the minority be forced to join the union of the majority's choice. This is not democracy. As President Roosevelt said, "This is much like the Hitler methods."

Democracy in America has never meant that the majority has the right to enforce its will in disregard of the majority's rights. Democracy has worked in America because majority rule has gone hand in hand with minority rights.

Thomas Jefferson expressed the American concept when he said: "The minority possess their equal rights, which equal laws must protect and to violate which would be oppression."

Every worker in industry has an equal right to work. He has a right to join a union if he sees fit. He has a right to choose which union he will join. Federal law, as I understand it, guarantees these rights.

These rights are not lost to any individual simply because 51 percent of his coworkers choose to exercise their rights in a different way. These rights are among the minority rights which Jefferson said equal laws must protect.

But the closed shop strips the minority of these equal rights.

If 51 percent of the citizens of any county are Republicans, that does not mean that the other 49 percent must join the Republican Party.

If 51 percent of the people in any city are Protestants, that does not mean that the other 49 percent must join the Protestant church.

This committee reports bills to the Senate by a majority vote—but the minority members of the committee do not lose their seats when they vote against the bill. But a workingman in a closed shop can lose his job if he opposes a union majority.

A Justice of the Supreme Court is not stripped of his robes if he dissents from the majority of his brethren. But a worker in a closed shop can be stripped of his right to work if he dissents from a union majority.

This is not democracy. It is collectivist absolutism. There is not an iota of difference in principle between it and the dictatorships which we have lately defeated on the field of battle. Hitler and Mussolini had their majorities. That did not make them right.

We are dealing here with what I can only call a false mysticism of numbers. The idea seems to be that some infallible wisdom resides in 51 percent. This is a delusion common to both fascism and communism, if we can judge from the lengths to which both systems go to roll up majorities.

Our American idea of democracy is totally different. We accept majority rule, limited by a Constitution, as the most practical and equitable alternative to anarchy. But, with us, the majority's rights end at the point where they would begin to infringe the equal rights of the minority.

One reason we must doggedly defend the equal rights of the minority is to safeguard one of the most precious of them—the minority's right to hold to its opinion and work by every lawful means to become a majority.

But the closed-shop union is a grotesque departure from American democracy. Its power is absolute. Through control of the right to work, it controls the right to live. With this crushing weapon in its hands, it can make short work of any minority or any individual member who dares to oppose the sacred will of the 51 percent.

I have been speaking all along of union majorities as if they were always real majorities. The sad fact is that they are often fictitious majorities—majorities of quorums which may actually represent only a handful of the membership. For example, the vote under which I was suspended from my union actually represented about 10 percent of the membership of my local.

Too often the cry of "majority rights" is no more than a cloak for minority wrongs.

It is well known that some unions are controlled by tightly disciplined minorities. Others are controlled by dictatorial labor bosses. If such unions have a closed shop—and some of them have—the individual's right to work is at the mercy not even of a majority, but of a small clique or single czar. In the face of these facts, to say that the closed shop is democratic is a mockery of democracy.

But whether a closed-shop union is run by a minority or a single boss, or even a genuine majority, compulsory membership in any private organization is undemocratic in principle. It has no place in our system and way of life. It should be abolished.

Third. The closed shop by its very nature leads to the invasion of rights guaranteed by the Constitution.

The Constitution guarantees to the people certain rights. It does not create those rights. Their origin is expressed in the second sentence of the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.

That sentence expresses the American philosophy of government, the thing that makes America different from most of the rest of the

world. No power under God can take those rights away, unless, perhaps, we forfeit some of them by crime.

The framers of the Declaration of Independence specified the rights to life, liberty, and the pursuit of happiness. But they did not imply that those are our only inalienable rights. They said that life, liberty, and the pursuit of happiness are among the inalienable rights of man—implying that there are others.

The Bill of Rights and other amendments to our Constitution imply the same doctrine.

The Supreme Court has declared:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Note that the Supreme Court refers to "other fundamental rights" as well as those named.

The ninth amendment is still more explicit:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

There is no human right more fundamental than the right of the human being to work. It is by work that men live. The right to life, specified in the Declaration of Independence and guaranteed by the fifth and fourteenth amendments to the Constitution, clearly implies the right to work.

The closed shop places in jeopardy this fundamental right to work. I am not arguing the unconstitutionality of the closed shop in itself. That is a matter for the courts. I am stating the facts of the actual situation in our country wherever the closed shop prevails.

These facts can best be seen in an industry-wide closed shop—which is the "ideal" aimed at by many unions. But the situation is comparable in any closed shop, in greater or less degree.

Wherever the closed shop prevails, if a union member is expelled or suspended by his union, he loses his right to work in that shop. In an industry-wide closed shop, he loses his right to work in that industry. In a completely unionized society, under a universal closed shop, expulsion from a union would mean complete and absolute loss of the right to work. As Samuel Gompers said, loss of membership in a union in an organized industry is equivalent to capital punishment.

The leader of the current Hollywood strike was not exaggerating when he said:

We contemplate putting out a bill so everybody in the country has to join a union, and you will be in a bad fix when it comes to that.

Millions of Americans are in that "bad fix" right now—whenever a closed-shop contract renders their right to work dependent on keeping in the good graces of a union, which often means a union boss.

A closed-shop union, able to deprive a man of the right to work, is in a sense more powerful than government itself. The Government does not claim the power to take away a man's right to work, unless he has been convicted of crime, after fair trial and due process of law. When

the Government puts a man in prison, it assumes the responsibility for keeping him alive, at least, with food and medical care—as well as shelter. A closed-shop union takes no such responsibility for a member who has incurred its displeasure. As far as the union is concerned, he is left with the right to starve.

A closed-shop union cannot justly claim the same right to choose its own members that a golf club or other voluntary association claims. A man and his family are in no danger of starvation because he gives up golf. They are, if he is obliged to give up work. A man may join another golf club but if his closed-shop union is powerful enough, as many of them are, he will find the door of every shop slammed in his face.

The right to work is only one of the constitutional rights which the closed shop, by its very nature, tends to invade.

In my case, the right of political freedom was invaded when I was given the choice between working or paying a political assessment. Freedom to pay or not to pay one's money to a political cause is clearly part of the right of suffrage.

An American citizen's political rights do not belong to his union. They do not belong to his employer. They do not belong to his bank or his lodge or his church. They do not belong to the Government of the United States. They belong to nobody but him.

You can read through the Bill of Rights and find scarcely one which has not been invaded by a closed-shop union.

The first amendment to the Constitution forbids Congress to make any law "prohibiting the free exercise" of religion. But a closed-shop union has usurped power that surpasses the power of Congress in this respect. My brief cites a case to show that at least one union is prepared to override religious freedom in order to compel men to join the union, and the closed shop gives the union the power to carry out its threat.

Congress is forbidden by the same amendment to abridge "the freedom of speech * * * or the right of the people peaceably to assemble." But in some unions no member dares to speak out or to combine with his fellow members against the entrenched power of the union boss or so-called union majority.

I have a letter from a man whose father was one of the pioneers in the union movement, telling how his father and the first union members had to meet in secret with the blinds drawn, for fear of their employer. Now, many union members have to meet in secret for fear of their union.

I would consume more than the time allotted to me if I attempted to list all the cases of infringement of free speech by closed-shop unions that have come to my attention. Your files probably contain more such cases than mine.

I will cite only one case, mentioned by the Senator from Minnesota, Mr. Ball, in a recent article:

A wireless telegrapher with a family to support was expelled from a union and lost his job merely because he spoke up in meeting against Communist leadership.

The first amendment further forbids Congress to abridge the people's right of petition. But a Massachusetts teamster was ex-

pelled from his union because he appeared before a legislative committee on behalf of a bill that the union opposed.

The fifth amendment states, "No person shall be * * * deprived of life, liberty or property, without the process of law." For any union member to appeal to the courts is practically equivalent to signing his death warrant as far as his union membership is concerned. In Hollywood, three members of one union were suspended for appealing to the courts against a political assessment—and two others were suspended because they spoke up in a union meeting in defense of the other three.

The eighth amendment forbids "cruel and unusual punishment." The courts cannot inflict such punishments—but a closed-shop union can deprive a man of his livelihood, often for the most frivolous of reasons. Only a few weeks ago, a young man in Chicago was expelled from his union and his job because he drew a mustache on a picture of a union officer. The union has assumed more power than the courts. The union can inflict cruel punishment—and can make it "usual."

It is said by advocates of the closed shop—even by some 'judges—that the unions are justified in going to these lengths because otherwise their existence might be threatened. I maintain that this is not true, that the closed shop is not necessary to strong unions. But even so, is the existence of any private organization so important that this Government should permit it to override the natural and constitutional rights of its citizens?

It is said that union members sign away some of their individual rights when they join the union. Is it sound public policy to permit this, especially when membership is not voluntary, but forced, as it is under the closed shop? On the contrary, any contract which pretends to sign away an unalienable right should be regarded as null and void.

It is said that the constitution of the union permits these excesses and therefore the courts should sustain them. This raises the question which this Congress and the Nation must face once and for all:

Does the constitution of the union take precedence over the Constitution of the United States?

Under the closed shop, it does.

We need a second emancipation proclamation to free those who have been forced to sign away their individual liberty. That is the primary reason why the closed shop must go.

Fourth. There is at present no practical redress available to a union member whose rights have been violated by a closed-shop union.

Under a closed-shop contract, the employer must discharge any employee when the latter is expelled or suspended by his union. In practical terms, for probably 99 percent of union members, this means that the man's livelihood is cut off. He may have small savings on which to live for a short time; he may be able to get another job, in another trade or profession or business, usually at wages lower than he has been receiving—but these are matters of

chance. He cannot do his chosen work, in which he is trained and skilled, in any shop where his union has jurisdiction.

The most ardent pro-union advocate will grant that a union might unjustly expel a member. What can the member do about it?

The union constitutions provide for appeals from the local trial board all the way up to the national convention. The convention may be anywhere from 1 to 5 years from the time the member was expelled. How many wage earners can wait that long without working?

It is notorious that some union trials are a travesty of justice. It is not unknown that a man's very accusers are appointed to serve on the board that tries his case.

The average union member cannot take his case to court. Most courts will insist that he first exhaust his remedies within the union—which may mean months or years of carrying a prejudged case through the farcical mumbo-jumbo of appeals from one union body to another.

But suppose he does exhaust his so-called remedies within the union and still believes an injustice has been done him. He may then go to court—and face, with his meager resources, the expensive talent of the union's legal department and the union's increased determination to make an example of him. Let us be realistic. How many workers—even if they were working steadily—could afford the long drawn out litigation thus forced upon them? How much less can a man afford it when he has been out of work for months or years.

The average man has absolutely no available redress of wrongs done him by a closed-shop union. The average union member, wronged by his union, has to battle with hands emptied when the union took away his right to work. What chance has he? To say that he has any chance is to deal in fictions as cruel as they are unreal.

It is not surprising that men and women with no income but their wages, with families to support and educate, many with debts to pay, have submitted to wrongs imposed by closed-shop unions rather than face the impossible task of seeking redress.

It is not surprising, but is it tolerable? That is the question which this Congress must answer.

It is within the power of this Congress to answer it resoundingly. It is within your power to do more than give redress to those already wronged. You can remove the power to inflict such wrongs again. The closed shop places that power in the union's hands. Abolition of the closed shop will remove that power forever.

Fifth. Nothing short of abolition of the closed shop can effectively remedy its abuses.

A poultice will not cure a cancer. Regulation cannot remedy the abuses to which the closed shop, by its very nature, tends.

The closed shop, controlling the individual's right to work, represents absolute power. In Acton's familiar words, "absolute power corrupts absolutely."

The only way absolute power can be controlled is by rendering it no longer absolute. The only way to eliminate the corruptions born of the closed shop is by taking control of the right to work out of the hands of any private individual or group.

If all unions were administered by angels, absolute control of the members' right to work would still be too great a power to leave even in angelic hands. And the record shows that union power is all too often in hands that are all too human.

Numerous proposals to regulate the closed shop have been put forward by sincere men who are fully aware of its abuses. But I submit to this committee that no law or set of laws could be drawn that would forestall all the possible abuses, because no legislative body could foresee their limitless extent.

Who could have drawn, ahead of time, a law to protect the boy who lost his job because he drew a mustache on a union officer's picture?

Such regulatory laws would necessarily have to be worded in general terms. Their interpretation would necessarily be left to the courts. And we have seen that appeal to the courts is, for the average union member, an illusory privilege.

It seems needless to labor the point of regulation versus abolition. An evil tree cannot bring forth good fruit; and no amount of pruning can make an evil tree good.

The vices of the closed shop are not accidental. They are inherent in its nature. They grow directly out of putting control of the right to work within the power of the union—which is the very essence of the closed shop. The closed shop is not a good thing being abused. It is a bad thing being protected.

You can as easily tame a raging lion with a thread of silk as attempt to cure the closed shop with palliative regulations.

The only practical result of attempting to regulate the closed shop would be to create another army of bureaucrats, reaching into the internal affairs of unions and businesses, patching and tinkering with a system that would inevitably defeat their efforts because its power is absolute. Attempting to regulate the closed shop would only extend the reign of administrative law, of which we have had more than enough. The result would be confusion worse confounded and corruption made more easily corrupt. Abolition of the closed shop is the only answer.

Sixth. Labor's gains need not be adversely affected by abolition of the closed shop.

The Senator from Oregon, Mr. Morse, is quoted by the Associated Press as saying, "We have to protect workingmen from employers who want to destroy the right to organize for economic benefit." (Hollywood Citizen-News, February 5, 1947, p. 1.)

I am entirely in agreement with that statement.

I need not tell this committee the story of the union's rise from handfuls of brave pioneers, defying the economic tyranny of short-sighted employers, to the great organizations that they are today. Through organization and collective bargaining, the unions have won substantial gains for labor.

I do not want to see any of labor's just gains destroyed or diminished.

The abolition of the closed shop need not either destroy or diminish them.

Present law guarantees labor's right to organize and bargain collectively. Abolition of the closed shop will not touch that right.

Present law, forbidding the "yellow dog" contract, guarantees the individual's right to join a union without loss of his right to work. The closed shop is simply the "yellow dog" contract in reverse. Abolishing it will not affect a man's freedom to join a union. It will restore his freedom to join or not to join as he sees fit.

Abolition of the closed shop will not affect wage-and-hour legislation or legislation governing working conditions. It will not affect the unions' right to campaign by lawful means for improvements in wages, hours, and working conditions, wherever improvement is needed and possible.

Abolition to the closed shop will not weaken the unions—if the unions are doing a job for their members. Any man will gladly and freely join an organization whose benefits to himself he plainly sees.

Union leaders must have little faith in their unions if they claim that the closed shop is necessary to the union's existence.

The Railway Labor Act specifically forbids the closed shop on the railroads. Yet the railroad unions are among the strongest and best in the country. This is covered more fully in my brief.

The success of the railroad unions is not explained away by saying that they succeeded in spite of open shop. To stop with that observation is to neglect the most significant fact, viz, that these unions became powerful not in spite of but because of open-shop conditions.

The explanation is simple. The abolition of continuous compulsory membership placed the control of the unions in the hands of the employees and prevented it from reverting into the hands of union officials. The employees now had the whip of rejecting an unsatisfactory union. Normal political opposition within the union could not be aborted because there was no job control in the hands of the officials. The result was that the unions became truly representative; the union officials were secure so long as, but only so long as they performed their functions honestly and efficiently; wherefore they performed their functions honestly and efficiently. Employees in unorganized units, no longer fearing racketeering or maladministration and no longer fearing being organized only to be "sold down the river," flocked to the unions.

Under those conditions unions served their needs, did their bidding, sought sane solutions for their problems. Thus unionism spread in the railroad field, and thus it continues to spread, because unions cannot rest upon force; they have to be good to succeed. To succeed, they become good; being good, they succeed in larger measure. (Bernard H. Fitzpatrick, *Understanding Labor*, p. 158.)

With this example before us, we can justly be suspicious of those who cry "antilabor" whenever the closed shop is criticized. Are they interested in labor or their own power?

As David Lawrence writes:

No proposals have been advanced by anybody in Congress to weaken collective bargaining or to take away basic rights from labor, but the remarkable opposition * * * toward any changes in existing laws is confirming the general impression that vested interests and special privileges die hard, no matter whether on the side of labor or management. (Hollywood Citizen-News, February 4, 1947, p. 12.)

In point of fact, abolition of the closed shop will be prolabor legislation—if by labor we mean the man who does the work. It will free him from a serfdom unparalleled in American history since the abolition of slavery.

There is only one argument for the closed shop that has any shadow of merit—the argument of the “free ride.” Its proponents say that if a union gets benefits for all the workers in a shop, the nonunion workmen get a free ride without paying for it. The reasoning is sound, but the conclusion, that therefore every worker should be forced to join the union, goes far beyond the premises. It would be one thing if a man could pay tribute to a union for the benefits he receives and then be let alone to live his life and pursue his destiny in freedom, but it is entirely another thing when, after having paid his tribute and become a member, his entire life is circumscribed and his fundamental rights laid open to invasion by the union.

The “free ride” can be wholly eliminated, without the closed shop. It has been done in Canada under what is known as the Rand formula. It can be done here. If nonunion workers derive real benefits from a union contract, they can reasonably be expected to pay a fair share of the cost of negotiating and administering the contract. This formula is in operation in some 20 Canadian plants and seems to work to the satisfaction of all concerned.

This involves no signing away of freedom or rights.

Some such arrangement could be written into our law, not as compulsory, but permissive. It should, of course, provide that the service charge must be fair and not excessive. Political assessments and other improper levies should be absolutely banned in any case.

It rests on those who appear before you in favor of the closed shop to show how its abolition would affect labor's gains.

To sum up the argument under this heading, I reaffirm that abolition of the closed shop need not adversely affect labor's gains. Cries of “antilabor” and threats of economic reprisal are not an answer to reasoned argument. I do not believe that this committee will be swayed by noise or threats.

Seventh. There is ample precedent for the abolition of the closed shop.

There are already two Federal laws prohibiting the closed shop in the fields which they cover. They are cited in my brief.

The Railway Labor Act of 1926, as amended in 1934, prohibits the closed shop on the railroads, with the excellent results that we have seen.

The Bankruptcy Act of 1933 prohibits a trustee in bankruptcy from entering into a closed-shop agreement with a union covering employment in any enterprise for which he is acting as trustee.

Measures prohibiting the closed shop have been passed by the legislatures or the people in seven States—Alabama, Arizona, Arkansas, Florida, Nebraska, South Dakota, and Virginia. In Louisiana a measure outlawing the closed shop was passed by the legislature but vetoed by the Governor.

There is ample precedent for a new Federal law abolishing the closed shop in all industries engaged in interstate commerce—restor-

ing to the workers in all those industries the freedom now enjoyed by the railroad workers, those covered by the Bankruptcy Act, and those within the growing number of States which have banned the closed shop.

I believe that more and more States will prohibit the closed shop within their own borders. But only Congress has power—

to regulate commerce * * * among the several States.

Necessity and precedent combine in giving this Congress an opportunity to free all American workers by abolishing the closed shop.

Eighth. Abolition of the closed shop is in accord with the will of the people.

Government's responsibility to the will of the people is of the essence of democracy. Under our form of representative democracy office-holders must periodically stand the test of election, rendering an account of their stewardship to their constituents. The people choose and reject on the basis of what they believe best for themselves and for the country.

The American people are opposed to the closed shop.

There is direct evidence for this statement in the most recent Gallup poll on the subject (Los Angeles Times, January 19, 1947). The scientific accuracy of Dr. Gallup's methods is generally conceded.

Sixty-six percent of the people are in favor of the open shop.

Only 18 percent are in favor of the union shop.

Only 8 percent are in favor of the closed shop.

Only 8 percent expressed no opinion—which is significant of the widespread public interest in this question.

The break-down of these figures by occupational groups is equally significant: 78 percent of farmers favor the open shop; 73 percent of business and professional people favor the open shop; 69 percent of white-collar workers favor the open shop; 56 percent of manual workers favor the open shop.

Union members, the supposed beneficiaries of the closed shop, voted 41 percent for open shop—with only 33 percent for union shop and only 19 percent for the closed shop.

Let us keep these figures in mind when advocates of the closed shop claim to speak for labor. They do not even speak for union labor with anything like a unanimous voice—and union labor is itself only a small minority of the people.

For whom, then, do union leaders speak when they insist that the closed shop must not be touched? They speak for themselves and their own power, not for labor.

Farmers, business, and professional people, white-collar workers, unorganized manual workers—they are labor, too. They are the best majority of the people. And they are overwhelmingly opposed to the closed shop. Who speaks for them?

They expect Congress to speak for them.

I am not suggesting that Congress should be a tabulating machine or a rubber stamp, I am suggesting only that you listen to a clear and accurate expression of the people's will, as well as to the inflated pretensions of a few bosses—and then that you guide your course of action according to your own best judgment.

I pray this committee not to be deceived by any honeyed messages about a so-called "era of good feeling," when hard upon the heels of these messages come threats that if Congress touches the power of the union bosses, they will take vengeance upon the Nation with another wave of strikes.

We should rejoice and applaud at every evidence of labor-management harmony, such as the building-trades agreement recently announced by the President. That is the way that a genuine partnership between management and labor can ultimately be produced.

But this kind of partnership implies freedom and equality between the partners. Labor law reform is the first step toward that goal. Abolition of the closed shop is the first step in labor-law reform.

This committee has had before it an expert witness, D. Leo Wolman, formerly an adviser to the Amalgamated Clothing Workers Union. His words bear repeating:

The comparative peace which has prevailed since October 1946, should not mislead us into thinking that the causes of strikes have been dissipated and that we are now on the threshold of industrial quiet and harmony * * * The heart of the problem is * * * the rise of a private institution, the national union, which has the power to * * * impose on the country arbitrary, monopolistic economic decisions.

The people will no longer tolerate a situation where a few men can tie up all the major seaports and all the major industries in the country within a few hours.

It is the closed shop that gives the unions this power. If the Congress wishes to protect the country from this power, it will abolish the closed shop.

The people know these facts. They have expressed themselves in more ways than one. The Gallup poll is one evidence. But there is stronger evidence in another and more meaningful poll—the last national election.

The people voted for a change—not merely a change of faces, but a change of policy.

Union power was an issue in that election. The people had had 15 years of the policy which gave unlimited power to the unions. They were promised reform. They accepted that promise and elected a Congress pledged to fulfill it. They did not vote to destroy unions, but to restore equality and freedom in labor relations. They will not be satisfied with anything less.

Freedom and equality will not be restored as long as the closed shop monopoly survives. The people look to their Eightieth Congress to end it. I am confident the people's Congress will not fail them. Thank you.

Senator BALL (presiding). Thank you, Mr. De Mille. Are there any questions?

Senator MORSE. Mr. De Mille, can you cite to the committee any United States Supreme Court decision that sustains your interpretation of the illegality of the closed shop?

Mr. DE MILLE. No, sir. I am not a lawyer. I am a small businessman who has been put off the air for attempting to retain his right of suffrage, and who has been suffering from a very long series of strikes in his industry.

Senator MORSE. Let me say, so that you may understand my point of view on this, that as to the abuses of the closed shop, many of which you have discussed in your brief, I am in complete agreement. As to any policy of the union to require a political donation or contribution from its members for political purposes, I am in agreement with you that it is wrong and ought to be outlawed. But as a legislator I have the job of reaching a decision as to legal questions concerning legislation that is proposed, and I think you will agree with me that your brief presents at least your view as to the guaranties of the Constitution of the United States which are violated by a closed-shop agreement, and therefore I for one feel that I have to investigate those interpretations of the Constitution that you make, and, of course, as a teacher for many years of an advanced course in constitutional law, I always said to my students: "Your views are no better than the authority that you can cite in support of your views."

So I will be very frank to say that before I could accept your interpretation as to the illegality of the closed-shop agreements in their relation to the Constitution, I would have to have ample legal authority and court decisions that sustain your interpretations, and I know of none, but if they do exist I wish you or your counsel would make them available to the committee.

Mr. DE MILLE. We will be very glad to send any that we know. I understand that the Congress makes the laws, and I do not think it is a question of the Supreme Court. The Supreme Court upheld the law of slavery in a famous decision in the fifties, and it is to free a group of people that I have come before the Congress, a group that are enslaved just as much as the group that was enslaved prior to 1865.

Senator MORSE. I understand your point of view there, but certainly your brief is filled with legal contentions involving great constitutional questions, and as to your conclusions on those questions I cannot accept them in the absence of legal support. I know of none that will support many of them.

I will point out, for example, in your reference to this so-called "management-building trades agreement," that has just been consummated, in regard to which a lot of publicity has been given in the country, but I do not think it is a true perspective that has yet been pointed out to the people of this country.

Remember that I for one do not prefer the closed shop. I think labor makes a great mistake in its closed-shop policy, but there is a question that I cannot get away from as a lawyer, and that is the right of an employer under freedom of contract to enter into such a contract, and I am still waiting for any witness to appear before this committee with a legal brief that sustains the proposition that that right does not exist under the Constitution of the United States.

Mr. DE MILLE. Senator Morse, I cannot present a legal brief; as I say, because I am not a lawyer. My statement was prepared by me, not by a lawyer, but I can speak for many millions of people, many millions of American citizens. As I said at the beginning, the American worker is, in the main, a very fine man. He wants his home and his children to be American. He thinks American. I know these men. I work with them.

Senator BALL. Would you say, Mr. De Mille, that if Congress outlawed the closed shop, that that would be any greater interference with freedom of contract than Congress did in passing both the Norris-LaGuardia Act and the Wagner Act, outlawing the so-called "yellow dog" contract?

Mr. DE MILLE. I would not think so; no.

Senator BALL. May I ask Mr. De Mille, have you taken your own individual case to the courts?

Mr. DE MILLE. Yes, sir.

Senator BALL. What happened?

Mr. DE MILLE. In the lower courts the union was sustained, on the ground that the union was fighting for its existence and had the right to levy an assessment although it was a political assessment, and because it was sustained by a majority vote of the union. Upon appeal the appellate court, the district appellate court, sustained the lower court on the ground that the union's constitution provides for assessment.

Senator BALL. In other words, in your opinion the courts in your own case—are you appealing to the Supreme Court?

Mr. DE MILLE. Yes, sir.

Senator BALL. The case has not been finished, but so far as you have gone, the courts, in your opinion at least, have permitted the closed-shop union to deprive you of your freedom of suffrage?

Mr. DE MILLE. Yes, sir; that is my whole contention here and that is why new legislation is needed. It is vitally important. Otherwise you are turning over to a small group of people actually the right to live, for a vast number of people. That is not a matter of legal opinion. That is a matter of bread and butter. I know men who are walking around from plant to plant. They have incurred the disfavor of a union, and are starving, after having used up the \$20 a week that they can get from the Government.

Senator ELLENDER. Mr. De Mille, why was it necessary for you to make such a contract? Why is it that you joined this union? Were you forced to do so?

Mr. DE MILLE. I had to join it; yes.

Senator ELLENDER. You had to join it?

Mr. DE MILLE. I had no choice. I had to join it or give up my profession.

Senator ELLENDER. You are a producer?

Mr. DE MILLE. Yes; but I am not on the air. If I speak on the air I would be working with AFRA members, and I cannot work with AFRA members.

Senator ELLENDER. As a producer do you have any union contracts? Must all the people you employ ignore the union?

Mr. DE MILLE. The people that I employ?

Senator ELLENDER. Yes.

Mr. DE MILLE. They must join the union. Do you mean in motion pictures or in radio?

Senator ELLENDER. Well, either way.

Mr. DE MILLE. Yes, sir; both.

Senator ELLENDER. How is that contract presented to you? Are you forced to sign it? Why don't you refuse to sign it?

Mr. DE MILLE. Well, we have to work.

Senator ELLENDER. In how many businesses are you engaged, radio and what else?

Mr. DE MILLE. Radio and motion pictures are the major businesses.

Senator ELLENDER. How many people do you employ in radio?

Mr. DE MILLE. In radio I do not employ any. I am a workman. I am employed.

Senator ELLENDER. You are employed?

Mr. DE MILLE. Yes, sir.

Senator ELLENDER. In the production end? In producing pictures how many people do you employ?

Mr. DE MILLE. In pictures? Well, in the making of a big picture it goes up into many thousands of people.

Senator ELLENDER. Do you head a corporation that employs people or do you employ them individually?

Mr. DE MILLE. I head a corporation that, in partnership with another corporation, employs the people.

Senator ELLENDER. Well, why is it that you agreed to hire none but union employees?

Mr. DE MILLE. I could not do otherwise.

Senator ELLENDER. You must employ them?

Mr. DE MILLE. Yes; I must.

Senator ELLENDER. Who asked you to agree to do that?

Mr. DE MILLE. Nobody asked me to agree.

Senator ELLENDER. But couldn't you refuse?

Mr. DE MILLE. Not and continue in business.

Senator ELLENDER. Couldn't you get together with the other producers and say to these people, "We don't want a closed shop"?

Mr. DE MILLE. I don't know whether that could be done or not.

Senator ELLENDER. I am sure you could. There is nothing to force you to employ union labor. Isn't that true? There is no law compelling Cecil B. De Mille or any of your competitors to employ union labor. Isn't that true?

Mr. DE MILLE. That is not entirely correct, as I understand it.

Senator ELLENDER. Why do you not get together, in the same manner as the unions, and decide whether or not you want a closed shop?

Mr. DE MILLE. I think there are some laws that prohibit that, are there not?

Senator ELLENDER. Not that I know of. That is what I would like your opinion on.

Senator BELL. I think, Senator, that would be an unfair labor practice if they got together with other employers.

Mr. DE MILLE. That is my understanding—we have very little choice, you know.

Senator ELLENDER. But you would not be forced, Mr. De Mille, to contract anybody unless you want to.

Mr. DE MILLE. You do if you want to make a living, if you want to continue your business.

Senator ELLENDER. That is just the point I wish to make. It is because you feel, in order to keep up your business, that you are compelled to do it.

Well, do you not think, Mr. De Mille, that if this Congress should restore to management the right of free speech, that a lot of your difficulties in regard to the closed shop would fade away?

MR. DE MILLE. Well, I have here a quotation that says:

In several cases the Board has held that an employer failed to bargain if he refused to grant a closed shop when the union demanded it.

Senator ELLENDER. It may be, Mr. De Mille, that a lot of the suggestions that have been made in bills that we are now considering will give more freedom to management. That I want to do. I am against the closed shop the same as you are, but I believe that it ought to be made the subject of collective bargaining, and the choice left to the employer to have a closed shop if he desires it. You would then be in a position to say whether or not you want it.

MR. DE MILLE. The employer can have a closed shop now if he wants it. I have talked to employers who have said they much preferred the closed shop.

Senator ELLENDER. Why not let them have it?

MR. DE MILLE. I hold no brief for labor or the employer. I am talking for the man who is a member of the union. I am asking freedom and liberty for him.

Senator ELLENDER. But, still in all——

MR. DE MILLE (interposing). I am asking that his rights of free suffrage be restored, that his rights as an American citizen under the Constitution be restored, and that the freedoms guaranteed to him by the Bill of Rights be restored.

Senator ELLENDER. I understand you perfectly, and you made a wonderful statement in that regard. But, you have just admitted that some managers desire the closed shop.

MR. DE MILLE. Yes.

Senator ELLENDER. Why do you want to deprive them of that?

MR. DE MILLE. They have it now. There is no reason why——

Senator ELLENDER. They cannot if your suggestion is followed to outlaw a closed shop. And, yet, you say a lot want it.

MR. DE MILLE. I think that the rights of the individual worker come far ahead of that management which wants a closed shop.

Senator ELLENDER. That may be true. But if Congress passes some of the legislation we are considering, whereby management will get more freedom than it now has, the matter of the closed shop can be left to collective bargaining.

MR. DE MILLE. Senator, I am not arguing for management, or what happens to management. I have not always been well treated by management. I am a little independent producer.

Senator ELLENDER. I think a mighty big one.

MR. DE MILLE. I have had my troubles with management too. I am speaking for the individual workman. I work with them. I work beside them—I mean on the set. They walk behind me and say, "Keep it up, C. B. Don't let anybody stop you on this. We are with you." But, they look the other way so they will not be seen as they say it.

I mean I get the same feel of fear through this country from union members that I got when I walked through Russia. I have not seen

it anywhere else, and it is a terrible thing to see it coming in this country.

There is nothing I want for myself in this, Senator. I am not asking a thing. I want my nine grandchildren to keep their feet on the same free American soil that mine were born on.

Senator ELLENDER. I feel sorry for such people as you describe who cringe and cower because of a union boss. And I wonder why they do not rise against such tyranny. It impresses me very forcibly—

Mr. DE MILLE. You should see why they do not rise, sir. I lived for 2 months barricaded in a plant where I was working because of the mass picketing that was going on around. You should see what—

Senator ELLENDER. Did you get any court protection?

Mr. DE MILLE. By putting American freedom and rights in the hands of a few men, where those men in some instances have a communistic tendency, you are just handing the American workmen in a ball to anti-American forces.

Senator ELLENDER. Did you attempt to get any court relief when you were so barricaded?

Mr. DE MILLE. The deputy sheriff read the order against mass picketing to the pickets and told them it was the law, and the cry went up from this crowd around this studio, "To hell with the law."

Senator ELLENDER. And the courts of California permitted such a thing?

Mr. DE MILLE. Well, the fear psychology all through—

Senator ELLENDER. Then I think the courts need reform.

Mr. DE MILLE. I am speaking of fear psychology all through, sir, from the highest to the lowest.

Senator BALL. Was the mass picketing in connection with that jurisdictional dispute out in Hollywood between the painters and the carpenters?

Mr. DE MILLE. Yes, Senator.

Senator BALL. Is that still going on?

Mr. DE MILLE. Yes, Senator.

Senator BALL. How old is the dispute?

Mr. DE MILLE. The first strike started in 1945. They then agreed to abide by the decision of the American Federation of Labor board, and it was off for about 3 months. The board made its decision awarding the IATSE the rights, and then the other side struck and called out sympathy strikers—strikers that had nothing to do with the two unions were called out.

Senator BALL. How long has it been going on, then, in all? Over a year in all?

Mr. DE MILLE. Yes; I have the dates right here, sir. March 12, 1945, is when it started, and it is still in progress, with a brief interim of about 3 months.

Senator MORSE. Do you think an anti-closed-shop bill would prevent that type of dispute?

Mr. DE MILLE. Yes, sir; because the men do not want it. Men walked out of that shop—men that I have worked with for 25, 26, and 27 years—crying, with the tears running down their faces. I have

walked with them, in the picket lines, outside. I have carried a banner in the picket lines, not because I approved of the strike but because I approved of the men.

Senator MORSE. Do you think what we ought to have is an amendment to the Wagner Act that outlaws jurisdictional strikes and gives to that Board the mandatory duty of rendering decisions which will be enforced by the courts if they do not abide by the decisions?

Mr. DE MILLE. Yes.

Senator MORSE. The question of jurisdictional disputes, it seems to me, is quite a separate and distinct question from a question of the closed shop.

Mr. DE MILLE. Entirely.

Senator MORSE. And the question of mass picketing is quite separate and distinct.

Mr. DE MILLE. The jurisdictional fight is just allowing two people who disagree to come into your parlor and take a couple of clubs and beat each other to death in your parlor, instead of doing it outside in their own yard.

Senator MORSE. Just absolutely inexcusable. I have yet to hear any labor leader that can justify that dispute or any other jurisdictional dispute in the country.

You spoke about some of your observations in Russia. I do not want to get off the point, but I do have a question I want to put to you.

Did you see any free trade unions in Russia?

Mr. DE MILLE. I did not see anything free in Russia, sir.

Senator MURRAY. Mr. De Mille, I assume that you feel that there may be some benefits and advantages from a closed shop as between the workers and the management. Is that true?

Mr. DE MILLE. Yes; I think possibly, yes.

Senator MURRAY. And that is the reason why management——

Mr. DE MILLE. May I correct my answer and say if proper laws are passed so that management can bargain as freely as labor and talk and have the right of free speech to talk to their employees. You cannot even speak to your employees now.

Senator ELLENDER. That is what I suggested awhile ago, rather than abolish the closed shop.

Mr. DE MILLE. But I am afraid you cannot cure the cancer with the poultice. The closed shop, to me, is a cancer in the national body, and we have either got to cut it out or it will destroy us.

Senator MURRAY. Well, the reason for the development of the closed shop was that trade unionism was having a struggle to get organized in this country, and to be able to bargain effectively with the management.

Mr. DE MILLE. Yes, sir.

Senator MURRAY. And you are in sympathy with the workers. You have made a very careful study of this thing, and I want to compliment you on the exhaustive study you have made here. But it seems to me that there may be some benefits and advantages from a closed shop, and that there may be some evils in it. Why not correct the evils and allow the closed shop to continue where management desires it? It may improve the workers. It may make them more efficient.

For instance, in apprenticeship, does not the closed shop give the union an opportunity to provide better workers for management?

Mr. DE MILLE. No, sir; that is exactly what I was talking about in my brief. I cannot bring in talent. For years I have brought a great deal of talent into Hollywood. I am not talking about actors alone.

Senator MURRAY. I am talking about skilled trades, of course, and not the class of work that you are interested in.

Mr. DE MILLE. I understand. But that is a great factor, too. We employ thousands and thousands of workers.

The railroad unions are very good examples of what I mean. I would not say that their efficiency had been hurt by the fact they are an open shop. I think the railroad unions are among the finest organizations that there are, and they certainly have not been hurt. Those men have their self-respect, because they have no master.

In other words, a union is great when it is run by the people, by the members, but when it is run by the board of directors telling the members what to do it is just like some governments. There are two great subjects before the world today. It is a question of whether government owns the people, or people own the government. That whole ideology is the next coming great battle in this world, and the same applies to unions.

Senator MURRAY. Well, I do not like to get too far away from the immediate subject.

Mr. DE MILLE. I do not mean to get away from it at all, sir. I think they are very close together. They are very close together. That ideology is working through the closed shop. It has the power where you give to a little group control of the right to work—actually control of the right to live.

I wish you had talked, Senator—perhaps you have—to some of the men that I have. I talked to a shipyard worker in San Francisco. During the last election, the last Presidential election, he was assessed a dollar for the Democratic Party. He was a Republican.

He objected to giving it. They said, "Well, you will give it, or else." Well, he gave it, but he made the remark that, "For every dollar that you force me to give to the Democratic Party, I am going to give \$2 to the Republican."

He got his slip when he got to the window. He was through.

He wandered around trying to get a job. I have his affidavit on this. He wandered around for 6 months trying to get a job. He could not. He came back to the union leaders and he said, "Listen, gentlemen, I have to work. My wife, who is a stenographer, has been feeding us, but I have to work." The answer made to him was, "If you go to another State and change your name, you may be able to get a job somewhere in the field that you know. You will get no job here or anywhere so long as you are under that name, because we know you."

Senator MURRAY. Is it not possible to declare practices of that kind illegal, and prohibit them?

Mr. DE MILLE. I hope so, sir. That is what I am here for—what I am pleading for.

Senator MURRAY. Then it is not necessary to destroy the program entirely in order to root out some of the evils that may develop in it?

Mr. DE MILLE. Chamberlain tried to reason with Hitler, sir. He tried to make a compromise, and it resulted in drenching this whole world in blood.

Senator MURRAY. I do not think that is an exact comparison to the situation confronting us here. It seems to me that if management wants a closed shop and believes that it is a benefit to them, that they ought to be able to bargain with the employees and have the closed shop, and, at the same time, declare illegal any practices in the closed shop which may operate to deprive a member of the union of his rights.

Mr. DE MILLE. I would definitely deprive management of that right, sir. I do not think management has any more right to have a closed shop than a union has a right to have a closed shop, because I do not think anyone has the right to own another human being.

Senator MURRAY. I think that is an exaggeration of the situation.

Mr. DE MILLE. Senator, you have not seen the hungry people. It is not an exaggeration, sir. I have seen people, these people that I speak of, that were put out because they would not pay the same kind of an assessment as mine. I just happened to be able to take the position, because I have the means to go before the public, which I will do State by State until freedom comes back into this Nation.

Senator MURRAY. I am not disputing that you may have had the experiences that you described, but I am talking about declaring those practices illegal and maintaining whatever may be good in the program.

Mr. DE MILLE. Well, I agree with you wholeheartedly, sir, in maintaining whatever may be good in labor relations, but I do not think the closed shop is one of the things that can be good, because I do not think you can, by changing the name of a disease, prevent it from killing you. I think it will kill you just as thoroughly.

Senator MORSE. I have just three more questions that I want to put to you, Mr. De Mille.

I want to come back to my Russian question, because it was only preliminary to another question I want to put. When you testified—and I quite agree with you, although I have not seen it by observation, but only by study—that there are no free trade-unions in Russia, you testified, in effect, also, did you not, that what we are dealing with there is out and out a policed state? That is what Russia is?

Mr. DE MILLE. Policed state?

Senator MORSE. Policed state; a totalitarian state.

Mr. DE MILLE. Yes, sir.

Senator MORSE. Without free trade-unions. I make that comment because I was interested——

Mr. DE MILLE. They have something under that name, sir.

Senator MORSE. Yes; but they are not free trade-unions as we know them in this country?

Mr. DE MILLE. No, sir.

Senator MORSE. It would be very interesting to hear a labor leader in the Red Square of Moscow get up and make a speech against governmental policy; would it not?

Mr. DE MILLE. He would not finish, sir.

Senator MORSE. I think you are quite right.

I was interested. I was in Germany this fall, and I was interested to hear our high military authorities in our Army over there say, one after another, that the greatest aid they had in the problem or the task of democratizing Germany, was the trade-unions, the free German trade-unions, which they had revived because there they found a nucleus of people who understood the democratic process.

Now, with those two contrasts, I want to come to the "yellow dog" contract situation in this country. In your answer to Senator Ball's argument, I understood you to take the position, as I think you also did in your statement, that, after all, the "yellow dog" contract decision is nothing but the closed-shop problem in reverse.

Mr. DE MILLE. Yes, sir.

Senator MORSE. And, of course, that I challenge, because, in the "yellow dog" contract situation, is it not true that what the courts held was simply this: that the "yellow dog" stipulation in the contract denied to free American workers the freedom to unionize? Is that not, in essence, what the contract really means?

Mr. DE MILLE. I cannot answer that. I will have it read, if the committee desires.

Senator MORSE. Well, I am just asking you.

Mr. DE MILLE. I do not know, sir. I cannot answer that. I am not familiar enough with the wording of the act, of the decision.

Senator BALL. We had a contract made unenforceable in the courts, a contract making nonmembership in a union a condition of employment.

Senator MORSE. Which is simply another way of making the statement I have made that what the court did was lay down a prohibition against that type of stipulation in the contract. In other words, it recognized under our American democratic system the freedom and the right of employment—of employees.

Mr. DE MILLE. Of employees, yes, sir.

Senator MORSE. Organized in the interests of their economic advancement.

Mr. DE MILLE. And, I am asking that you regulate those who organized them.

Senator MORSE. Now, what you are asking is that that freedom shall be restrictive, in that they shall not have the right to exercise that organizing freedom under a closed-shop contract.

Mr. DE MILLE. No, sir. You mistake me. When I say "the 'yellow-dog' contract in reverse," I say a man has a right to join a union.

Senator BALL. Will you speak into the microphone?

Mr. DE MILLE. I beg your pardon. I should know.

A man has the right to join a union, if he so pleases, and an employer cannot discriminate against him because he joins it. So, a man has the right not to join a union, if he pleases, and an employer should not have the right to discriminate against him because he does not wish to join it. That is what the proposition was about this dollar. It was an amendment to the constitution of the State of California to the effect that there could be no discrimination against a man because he did or did not belong to a union.

Senator MORSE. In other words, the referendum for which they asked a dollar contribution from the members of your union was an anticlosed-shop referendum.

Mr. DE MILLE. Well, I do not know if you call it that. If that is an anticlosed shop, then that is it.

Senator MORSE. Well, it was a referendum that sought to outlaw the closed shop in California.

Mr. DE MILLE. Well, I would not put it that way, sir. I would say it sought to give freedom to one-half of the citizens rather than make slaves of all of them, or make slavery compulsory.

Senator MORSE. I will accept even your definition. The legal purpose of the referendum, however, was to make it illegal, in effect, for an employer and a union to enter into a closed-shop contract.

Mr. DE MILLE. Well, your legal mind would be very much better than mine on that, sir.

Senator MORSE. Well, the referendum will speak for itself. Of course, I must say that I can see some very interesting facts developing as to your case if the matter was one of the union trying to fight for its very existence against the referendum that sought to destroy the right of the existence of a closed-shop union.

To get back to my point, I am going to summarize my position very quickly on the point in regard to whether or not this anticlosed-shop drive simply involves the yellow dog contract in reverse. Again, I think the gentlemen that so argue will look in vain for any legal authority that sustains that proposition. When they can give me that legal authority or when they can give me a United States Supreme Court decision that sustains their point of view, they might be surprised to find another advocate for their legislation.

Mr. DE MILLE. Senator, I am asking that the Congress give the Court the legal authority.

Senator MORSE. Congress cannot amend the Constitution of the United States.

Mr. DE MILLE. No, sir. They can pass laws, though, as I have stated in one case already where there was a law supporting slavery—a decision, I mean, supporting slavery—by the Supreme Court. I do not know what happened to it, but we do not have any slavery.

Senator MORSE. You know why.

Mr. DE MILLE. Any slavery, I mean, where you purchase the man for money.

Senator MORSE. We paid for that one in blood, sweat, and tears.

Mr. DE MILLE. And, I am praying that we do not have to do it for this. But, men will fight for their liberty, sirs. They will fight for liberty when liberty is in danger. It is up to Congress to give them freedom and not force them to fight for it.

Senator MORSE. Now, I think, we are striking pay dirt, because, as a legislator, again, I am confronted with the actual situation in this country of hundreds of closed-shop contracts, some 8,000,000 workers working under some form of a closed- or union-shop contract, who believe, these 8,000,000 and the employers, that they prefer that type of contract, believe that they should have the right to enter into that sort of a contractual arrangement if they want to.

I am at a loss to understand how anyone can believe that the passage of a law that will outlaw, in effect, those contracts is going to lead to industrial harmony in America. I think we will go into a period of tremendous industrial unrest, and that is why I am pleading for attacking the abuses of the closed shop by way of amendments to the Wagner Act that, by way of statute, will make it possible to protect you from coercion and intimidation.

I know that there are closed-shop contracts that are the result of intimidation and coercion, and I hold no brief for them. But, again, I get back to this major premise. I cannot vote for a bill that I think cannot be squared with the legal rights of the people that enter voluntarily into a closed-shop agreement, believing that the right of freedom of contract in this country assures them that privilege.

Mr. DE MILLE. Senator, I do not think Congress has the right to protect two or three or a number of employers who happen to want the closed shop to the detriment of the freedom of millions and millions of people. When you say that passing a closed-shop bill may lead us into an era of economic unrest, my impression is that for the past couple of years all has not been entirely sweetness and light economically.

Senator MORSE. It has not been over the closed-shop fight.

Mr. DE MILLE. It has not been over the closed shop?

Senator MORSE. No.

Dr. DE MILLE. I think it has been because of the closed shop.

Senator MORSE. There is some interesting political bargaining that has been substituted in this country for collective bargaining.

Mr. DE MILLE. When you get into politics, sir, I am completely out of my depth.

Senator MORSE. I have to stay in it.

Senator BALL. Thank you very much, Mr. De Mille.

STATEMENT OF HAROLD W. STORY, VICE PRESIDENT, ALLIS-CHALMERS MANUFACTURING CO.

Senator BALL. Will you proceed, Mr. Story? Are you ready?

Mr. STORY. Good morning, gentlemen.

Senator ELLENDER. How are you?

Mr. STORY. Very well, thank you, Senator Ellender. My name is Harold W. Story. My home address is 2924 North Shepard Avenue, Milwaukee, Wis. I am vice president of Allis-Chalmers Manufacturing Co., with which I have been associated since 1919. My general qualifications as a witness are included in my brief. I would like to mention a few.

For 9 years I was legal adviser to our employees—in other words, a free legal adviser to the employees. I saw about two a day during the 9 years. I know how employees think. I know their problems.

From 1933 through the 1941 strike I was labor adviser to the vice president of manufacturing of our company. During that time I wrote or approved all grievance answers which reached the top level.

I was chairman of the Allis-Chalmers negotiating committee from 1937 through the 1941 strike.

I am the president's official representative on the present negotiating committee of the company, having become a member of that committee on June 3, 1946.

In the short time allotted to me, I intend to highlight the very important matters which are included in more detail in my brief, as you can see. If possible, I would appreciate the opportunity of completing various sections of my comments before questioning. In that way I think I can do a better job of explaining.

My statement is in two parts. Part I deals with the misuse of union power by Communist leaders and recommends specific remedies for abuses. Part II discusses various legislative proposals which are aimed to produce a more balanced national labor program.

Now, starting with part I, in my opinion the greatest menace to democracy today is the abuse of union power by communistic leaderships whose aim is to advance the cause of communism by a fifth-column movement under the guise of trade-unionism.

Necessarily, my opinions are formed by my own experience—my experience with the leadership of local 248, which has been in power since 1937.

To determine whether a union leadership is communistic I apply the old sayings of "Birds of a feather flock together" and "By their fruits ye shall know them." In other words, by "communistic leadership" I mean Communists or party liners.

My first job in this presentation is to show to you, beyond question of a doubt, that the leadership of local 248 is communistic.

I refer you, first of all, to statements in the Milwaukee Journal in recent months which declared unequivocally that Mr. Buse and Mr. Dombek, former president and vice president of local 248, are Communists.

Next, I refer you to a long series of articles in the Milwaukee Sentinel in which it was stated that Mr. Buse and Mr. Dombek are Communists—that all the bargaining committee are Communists or party liners.

Now, gentlemen, I would like you, if you will, please, to turn to exhibit 1 of the brief. You will note the heading: "The Communist connections of local 248 leaders." I merely call to your attention the careful documentation of this exhibit to show that it contains not idle comment but references which are conclusively indicative of the fact that they are party liners.

Senator MURRAY. Mr. Chairman, could I ask a question right at that point?

Senator BALL. Yes, Senator.

Senator MURRAY. Do you consider a statement in a newspaper that a person is a Communist or party liner as conclusive proof that he is so?

Mr. STORY. I do not; but I consider it very indicative, because newspapers normally will not take a chance with libel suits.

Senator MURRAY. Well, they seem to be taking chances, because suits are being brought around the country, and they are apologizing in some instances for it.

Mr. STORY. The Milwaukee Journal and Sentinel have not apologized, and no suits have been brought against them. So I think it is

natural to conclude that since there is no suit the statement is probably true.

Senator MURRAY. Do you not think that there should be some other way of establishing that as a fact than to have someone write it in a paper and then have that taken as conclusive evidence of a man's connection with communism?

Mr. STORY. Well, I think that one should attempt to find, by every possible means, Senator, the fact. Of course, because of the secrecy of the organization, it is very difficult to prove the fact.

Now, I am glad you brought up the question, because exhibit 2, I think, proves it conclusively. It is purely factual. It is not a question of anyone's opinion. So, may I call your attention to exhibit 2.

Senator ELLENDER. Before you go to that exhibit 2, Mr. Story, as I recall, at the convention of the CIO held in Atlantic City several months ago, an effort was made by the CIO to remove all Communists from its membership. Has this been brought to the attention of the CIO organization?

Mr. STORY. Well, I assume it has. We have not, specifically, because, after all, that is their own business.

Senator ELLENDER. Has any action been taken by the main organization against this local?

Mr. STORY. Well, Senator, the whole internal problem of the UAW-CIO, the international union, involves precisely that question. In other words, the little disagreement between Messrs. Reuther and Thomas certainly has brought to light the fact that there is a possibility of these men mentioned in the exhibit being communistic. In other words, communism is one of the elements in the fight.

Senator ELLENDER. I was under the impression that the CIO, as well as the AFL, had resolved to get from their union membership all Communists or anybody tainted with it, so this might be a good suggestion to bring to their attention.

Mr. STORY. It is an excellent suggestion. Thank you, sir.

Now, if you turn to exhibit 2, please, you will find the exhibit contains nomination papers of a man named Sigmund Eisenscher for Governor on the communistic ticket.

Whose original signatures do we see attached to the nomination papers? Let me run through them, please.

On the first nomination paper is that of Robert Buse. He is the No. 1 man on the sheet.

Elizabeth Blair, secretary, Milwaukee County Communist Party, is the notary that notarized that paper.

Please turn to page 2, the second nomination sheet. The No. 1 position is that of Mr. Arne Hansen. He is a member of local 248 bargaining committee, local 248 delegate to the 1946 National UAW-CIO Convention, and arrested September 9, 1946, on a charge of interfering with trains.

The No. 2 man is Mr. Joseph Dombek, former vice president of local 248.

Again, at the bottom, the notary who is supposed to have taken the acknowledgement is Elizabeth Blair, Communist.

On the third sheet, Mr. Fred McStroul, recording secretary of local 248 since 1938, is the notary.

On the next sheet is Kermit Gavigan, local 248 steward.

Anthony Todryk, local 248 steward.

John Kaslow, sergeant at arms and recently a member of the bargaining committee.

Alfred Ladwig, financial secretary of local 248.

E. F. Handler, editor and educational director for local 248.

William Ostovich, guide of local 248, chairman of local 248 educational committee.

Gerald Mayhew, local 248 committeeman, Hawley plant.

George Laich, staff of local 248 Daily Picket.

John Burja, committeeman.

Owen Lambert, local 248 committeeman, recently removed from the ballot for assemblyman because he is an avowed Communist.

Now I can go on and on with names that will show you the conclusions which may be drawn. It all adds up to just this:

Among the signers of the nomination papers for Communist Sigmund Eisenscher were:

The majority of the top-ranking officers of local 248, including the president, the vice president, the financial secretary, the treasurer, the sergeant at arms, and others.

A majority of the top-ranking members of the staff of the Wisconsin edition and local 248 edition of the CIO News, official organ of the State and county organizations and local 248.

A majority of the staff of local 248's official strike publication, the Daily Picket.

The chairman of the local 248 veterans' committee.

All of the outstanding members of the educational staff of local 248, including their education director, the chairman of their education committee, and a number of members of the educational committee.

And now this is significant: About 40 percent of the stewards of local 248.

And, finally, of the 227 sets of the nomination papers circulated in Milwaukee County, 84, or 37 percent, were circulated by members or officials of local 248; and many of them were notarized by a local 248 officer or attorney.

Senator AIKEN. Mr. Story, can you tell us here how many votes were cast for the Communist Party in Milwaukee County?

Mr. STORY. Well the Communists are not on the ticket in Milwaukee.

Senator AIKEN. I mean, how many were cast for the State ticket in Milwaukee County.

Mr. STORY. I have not those figures here.

Senator AIKEN. Do you know how many were cast in the entire State of Wisconsin?

Mr. STORY. No; But I can have those gotten for you in just a few minutes.

Senator AIKEN. The reason I asked that was that a few years ago we had a large number of signers on petitions to put the Communists on the ticket in Vermont; and when the votes were taken, instead of a large number of votes which might be anticipated from the signing of petitions, there were only 400 in the whole State.

I wonder if people signed these petitions just as people sign petitions, or whether they really had a purpose of advancing the Communist Party.

Mr. STORY. I can give you my opinion, and it is this—that when these gentlemen signed these nomination papers, they signed to support the principles of communism. Now, whether they are in fact Communists or not, I do not know, sir.

Senator AIKEN. What I was wondering was this—whether the labor difficulties which have prevailed in this vicinity had caused any number of voters to sign a Communist petition or vote the Communist ticket as a form of protest against conditions.

Mr. STORY. It is my opinion not, sir.

Senator AIKEN. You think it is just a normal communistic vote and influence that prevailed?

Mr. STORY. It would be my opinion that this is a small group that are really communistic in their ideas.

Senator AIKEN. I wondered how effective they are, and that is why I asked if you could tell us how many votes were cast in the county for the Communist State ticket.

Mr. STORY. I can say this: It is a very small figure. Politically, I am not at all concerned about the Communist movement. I am only concerned about the Communist movement in labor unions, where they have the protection of laws and a psychological protection which is even more important.

In other words, they get the protection that is accorded to bona fide trade-unions.

May I continue?

Senator AIKEN. Yes; go ahead.

Mr. STORY. It seems to me, in answer to your question, Senator Murray, that the record shows conclusively that the leaders of local 248 are communistic within the definition that I gave to you. In other words, they are either communistic or party liners, and I do not know as it makes much difference, as long as they function to the end of the advancement of the cause of communism.

Senator MURRAY. I have had some experience with these petitions and the signing of petitions, and it has been found frequently that people indiscriminately will sign a petition that is offered to them on the street without investigating it carefully, and that frequently it is found that where a lengthy petition has been filed, when it comes to a vote, they do not get any votes at all.

Mr. STORY. I think that may well be true, and I—

Senator MURRAY. Then you cannot convict a man of being a Communist merely because he happens to be careless and gets his name on a petition.

Mr. STORY. Well, I think the situation is rather different in these nomination papers. It certainly is more than carelessness, based upon the number of the leadership of local 248 who signed. That is more than inadvertence.

These papers were prepared and circulated by officers of local 248. So it is not a matter of inadvertence, I believe.

Senator ELLENDER. Do you know whether or not these people were registered voters in Wisconsin?

Mr. STORY. I have no means of knowing, sir. I assume they are.

Senator ELLENDER. Do you know whether or not they have to declare their party affiliation?

Mr. STORY. Well——

Senator ELLENDER. Do you vote in Wisconsin?

Mr. STORY. Yes, sir.

Senator ELLENDER. Do you have to declare your party affiliation?

Mr. STORY. No, sir.

Senator ELLENDER. It is not the law?

Mr. STORY. No, sir.

Senator ELLENDER. So you could not find out from their registration?

Mr. STORY. Right.

Now, if you will examine exhibit 3 of the brief, please, you will see the title: "How Local 248 Has Been Used as a Tool of Communism." It is again a memorandum which has extensive documentation. The value of it as evidence is something which you must get from the language itself.

Now, let us consider the legislative approach to what I call the menace of communism in the labor movement.

There are two definite approaches. The first one I oppose. It is the barring of Communists from membership in unions. Doing this would be too much like adopting the liquidating technique of communism. If we did that, we would be merely destroying democracy by adopting the technique of a dictatorship.

The second approach that I do recommend is what I call the weed-killer technique.

You have heard of a recent chemical discovery which kills certain weeds and does not harm the grass. In the interests of the public and the employees, I recommend the blocking out of destructive Communist technique by weed killer legislative remedies, without harming the grass of constructive democratic unionism. In my following remarks I would like you to apply that test. I will attempt to evaluate each proposal on that basis.

I will start with section 1 of the brief, under the heading of "False propaganda."

One of the Ten Commandments says, "Thou shalt not bear false witness against thy neighbor." The Communist technique is to do precisely what the commandment forbids. The technique is a copy of Mr. Hitler's technique in *Mein Kampf*; he stated in effect, "The bigger the lie, the more it is likely to be believed."

The communistic leaders of local 248, since 1937, have been attempting to undermine the relations of Allis-Chalmers' management with its employees by false propaganda.

The brief gives eight typical examples of this kind of undermining propaganda. Innumerable other examples are available.

In watching the operations of Local 248 with false propaganda I have been concerned with the fact that there is no effective way to fight communistic propaganda under the state of our laws at this time.

Libel suits for corporations are difficult. They must apply only to attacks in the area of financial security. At any rate, law is slow. Judicial procedure is slow. Counterpublicity is not effective; it is weak. The Communists know it.

I will tell you why. As soon as the company attempts to answer every charge that a communistic leadership makes by way of false propaganda the public and employees and everybody else get sick of it. They just say, "Well, it is just a lot of name calling, just a dog fight." So the answering publicity—the application of the only method that we have to combat it—brings no effective result.

What we need is a public forum wherein there can be a quick decision on false propaganda, false statements. In that way an employer could bring before a forum, a disinterested forum, any charges of untruthful statement, by press or radio, and obtain a decision.

After the decision is rendered it could be publicized to the employees. That decision would have weight. It would counteract false propaganda and would do a good job of effectively preventing it in the future. After a few decisions of that kind the employees would perceive the unreliability of their leaders.

Senator ELLENDER. Mr. Chairman, do you propose to continue with this witness after 12 o'clock, or will you stop?

Senator AIKEN. It is apparent that Mr. Story cannot finish his testimony before 12. We have a session of the Senate at 12 o'clock. So far as I know, there is no important matter to be taken up at this session of the Senate, and it will be possible for us to come back here at 2 o'clock.

Are you at a point now, Mr. Story, where you can suspend your testimony?

Mr. STORY. Might I have 1 minute?

Senator AIKEN. Yes. Have the 1 minute now, and then we will suspend for the morning.

Mr. STORY. Let us apply the weed-killer test to false propaganda. No bona fide labor union could object to it. Of course, it would apply to the employer, too. It is a two-way provision.

And, in connection with the "free-speech" amendment that I have heard of, it would be very helpful, because it would effectively limit abusive free speech by the employer as well as by the union.

Senator ELLENDER. Mr. Chairman, the witness has made very serious charges against quite a few of the members of this Local 248, and I referred awhile ago to the report that the CIO had established some method of weeding out Communists from various organizations. I would suggest that since quite a few copies of this brief are available that one be sent to Mr. Philip Murray, as I would like to test the sincerity of his intention?

Senator AIKEN. Mr. Story?

Mr. STORY. We will send the copy to Mr. Murray.

Senator ELLENDER. And I wish you would do that at once, and we would like to get results from Mr. Philip Murray after examination is made.

Mr. STORY. It will be on the way before the noon hour is over.

Senator AIKEN. If you have reached a good place to suspend in your testimony we will recess until 2 o'clock.

Senator MURRAY. Before you suspend, I understand that your proposal is that a forum should be set up with a view of being able to determine accurately the truth or falsity of statements of this kind that you are complaining about, and you believe that should apply both ways?

Mr. STORY. Oh, certainly.

Senator MURRAY. So, that in a dispute over wages, for instance, if the employer takes the position that he cannot afford to pay the increased amount asked, they would be entitled then to go into the full question of whether or not he is able to pay, whether that statement is true or not?

Mr. STORY. That is fact finding, sir.

Senator MURRAY. It is a statement. You make a statement to the effect that you are unable to pay it. Then, has it not the right to determine whether that is a false statement or a true statement?

Mr. STORY. It is a false statement concerning the other party, not concerning elements of collective bargaining.

Senator MURRAY. You want to confine it to what? False statements concerning what?

Mr. STORY. For example, there were charges made by the president of the union through the Daily Picket, for which he is responsible, and charges in the newspaper by the vice president, Mr. Dombek—

Senator MURRAY. You want to confine—

Mr. STORY. That the company hired strikebreakers, imported strikebreakers, which is a violation of Federal laws. I want that sort of defamation to go to a forum where it can be decided promptly so that our employees will know the truth.

Senator MURRAY. Well, I am in favor of such a fact-finding system to determine the truth or accuracy of these things, but it seems to me it should be full and complete, and that the employer should not be entitled to public statements in the papers and to make statements to his employees that he is unable to pay the additional amount demanded, and get away with it. There should be some effort to determine whether or not he is making a true statement or a false statement.

Senator AIKEN. If there is no further comment, and there is not much time for further comment, the committee will now recess until 2 o'clock this afternoon.

(Whereupon, at 11:58 a. m., the committee recessed until 2 p. m.)

AFTERNOON SESSION

(Committee members present: As noted for morning session, Senator Taft being present during the testimony of the last witness for the afternoon.)

Senator AIKEN. The committee will come to order. Mr. Story, will you take your seat?

STATEMENT OF HAROLD W. STORY—Resumed

Senator AIKEN. Before Mr. Story continues his testimony, I wish to state that he has handed me a copy of a letter which he has just addressed to Mr. Philip Murray, president of the CIO.

In this letter Mr. Story is advising Mr. Murray that he is sending Mr. Murray a copy of his statement which is being made at this hearing.

May I ask you, Mr. Story, does that include the exhibits, too?

Mr. STORY. It includes the brief, the entire brief, all documents.

Senator AIKEN. I think that that would be very satisfactory. The committee will be interested in getting Mr. Murray's reaction to your testimony.

Now, Mr. Story, if you will continue with your testimony from where you left off when we recessed this noon.

Mr. STORY. May I please make one correction for the record?

Senator AIKEN. Surely.

Mr. STORY. I made the statement today that Messrs. Buse and Dombek are no longer officers of Local No. 248, CIO.

What I meant to say was that those two gentlemen are no longer employees of the Allis-Chalmers Co.

Senator AIKEN. That correction will be made in the records; the stenographer will note it.

Mr. STORY. We come next, Mr. Chairman, to section 2, which deals with the supervised secret ballot. The strike is the most powerful weapon of communistic union leadership to accomplish its aims. First, the peacetime purpose—

Senator AIKEN. Are you reading from your prepared statement now, Mr. Story?

Mr. STORY. No; these remarks are all from my notes.

Senator AIKEN. Then when you are referring to section No. 2, what do you mean?

Mr. STORY. Well, section No. 2 of my brief.

Senator AIKEN. That is exhibit No. 3?

Mr. STORY. It is on page 19 of my brief.

Senator AIKEN. All right, go ahead, Mr. Story.

Mr. STORY. The peacetime purpose is the creation of industrial strife, class hatred and general employee unrest. The wartime purpose would be, in short, the stoppage of production.

So, there is a vital necessity for legislative curbs upon the strike weapon when it is used in the hands of a communistic union leadership.

Now, just how does a communistic union leadership apply the strike technique? It is quite simple.

First, they select a communistic chairman for the election committee, or a supervisor of elections.

Second, they rig the election. I say that advisedly, based upon our own experience. I will give you an example. In our 1941 strike, which we called the strike against the national defense, you will remember that we had a large destroyer program which was delayed by about 6 months on account of the strike.

There the union had a man by the name of Joe Schneider as chairman of the election committee. He was a man who had definitely communistic inclinations. I have that statement upon his record.

The strike vote was rigged. It was rigged by stuffing the ballot boxes with over 2,000 ballots. Now, that stuffing was proved in open

court by handwriting experts, John F. Tyrrell and Clark Sellers, who were the handwriting experts in the Lindbergh case.

In the hearings before the State labor board where that matter was in issue, the union, through its counsel, admitted ballot stuffing in excess of 2,000 ballots. Thus, our 1941 strike was not a valid strike under the Wisconsin law; nor was it valid from any democratic American standpoint.

Now, let us consider the technique of the 1946 strike.

Mr. Al Glenn was appointed by the international, UAW (CIO), as the supervisor of the strike. Mr. Glenn's background, the communistic character of it, under my definition, is contained in my brief.

Now, let us take a look at Mr. Glenn's specifications for an "honest ballot." There was no poll list; no identification was required to receive a ballot or vote. Voting was not in a private booth.

I ask the members of the committee, please, to look at the photograph following page 23, of my brief. If you will look at it, you will note that there is neither a back nor a top to the four balloting booths. You will note a man standing on the table, looking down on the man voting in the first booth. You will see men standing back of the voters, observing how their ballots are marked.

If you will look at the lower part of the photograph, you will see a union representative by the name of Todryk. He is handing a ballot to a prospective voter. The voter is a lady; you cannot see her face, and I do not believe that Mr. Todryk could see her either.

Now, all of that very definitely shows that no identification was needed to receive a ballot.

Therefore, it is quite conclusive that there was no secret ballot vote, no bona fide vote in the 1946 strike. Therefore, I have the firm conviction that the 1946 strike was fraudulent and called for Communist purposes, just as surely as was the proven and admitted fraudulent ballot strike of 1941.

Prior to the strike, in order to prevent a recurrence of the 1941 ballot fraud, the company offered to the union a three-point program. It is commonly known as the company's three-point strike ballot program.

The three points were as follows:

1. Joint statements would be sent in a single envelope to the employees. In other words, the union would make a statement of its position and the company would do likewise, and the two statements would be sent to the employees.

The purpose of this was to have a clean-cut statement of the positions and of the issues from the two parties, so that the employees would not strike except on issues they understood.

2. The strike vote would be on company premises—on company time and at company expense—under the supervision of a governmental agency, either the State labor board, the National Board, or the Conciliation Service.

3. The ballot read:

Do you instruct your union to call an immediate strike?

Based on my personal experience, I believe that a supervised strike vote would have a great deal to do in curbing the menace of communistic leadership in the area of calling strikes.

Senator AIKEN. Mr. Story, was the strike vote in the 1946 strike nearly unanimous?

Mr. STORY. It was—well, I would say, quite so. The vote was, let us say, 95 percent or 96 percent.

Senator AIKEN. There were some “no” votes then?

Mr. STORY. There were some “no” votes reported.

Senator ELLENDER. What percentage of the workers voted?

Mr. STORY. On the basis of the ballot count?

Senator ELLENDER. Yes.

Mr. STORY. About 8,500 out of 11,000. Assuming that that tally was correct, it showed that number voting.

Senator AIKEN. Did they vote from a check list, a check of the voters?

Mr. STORY. They had no poll list; they had no means of identification. The photograph that I showed you—following page 23 of part 1 of my brief—showed that there was no identification needed to receive a ballot. This you can see by the location of the young lady whose hand is outstretched to receive the ballot from the union representative, Mr. Todryk.

Senator AIKEN. Do you feel that a secret ballot would result in a good many strikes being eliminated from the industrial field?

Mr. STORY. I do, provided that you take the other two points. May I explain?

Senator AIKEN. Do you think that the Federal Government should supervise the balloting?

Mr. STORY. I believe that somebody should supervise the balloting, if you are going to prevent ballot frauds of the kind we had.

Senator AIKEN. State laws could control that?

Mr. STORY. Yes, indeed; they could control that. As a matter of fact, there is an amendment now being proposed to our State law, requiring a supervised ballot. You know the Wisconsin law provides for a majority vote for a strike in order to have it legal.

Senator AIKEN. You may proceed.

Mr. STORY. So it is my recommendation that there be an amendment to the National Labor Relations Act to provide for a three-point program, for a supervised strike ballot as a basis for a strike.

Now, there is one point that I wish to make concerning the form of the ballot.

There is a great deal of psychological difference between instructing representatives to call a strike and authorizing them to do the best they can do to get a settlement, and only when they are unsuccessful to call the strike.

The strike ballot shall fairly put the seriousness of the matter before the employees. In my opinion, it should contain a positive instruction, for the calling of a strike so that when the employee voted for a strike, they would know that that strike was imminent. I think that is a very important point.

I also think that the joint statement, to which I referred, is also extremely important. In no other way can there be a fair presentation of the facts to the workers.

As to the “weed killer” test. No bona fide union could object to a supervised secret strike vote. A great many unions now use an

outside group to conduct an election. I think it is called the Honest Ballot Association.

That finishes section 2, Mr. Chairman. If you have any questions on that, I shall be glad to answer that.

Senator AIKEN. Any questions, Senator Ellender?

Senator ELLENDER. No.

Senator AIKEN. Senator Murray?

Senator MURRAY. No.

Senator AIKEN. All right, go on with your next point.

Mr. STORY. The next section, section 3, pertains to the governmental guaranty of democratic administration of unions.

Over the years, leadership of local No. 248 has throttled the democratic rights of the members of that local.

The proof of that statement, I submit, is contained in exhibit 6 of the brief; again, it is well documented and submitted for what it is worth.

The most recent proof is the revolt of over 4,000 employees over the lack of democratic administration of the affairs of local No. 248. That proof is to be found in the petition of a large group of employees headed by Mr. Petersen, I believe, who is now heading the independent movement.

The petition asked Mr. Reuther—or the international union—to put an administrator over the affairs of local 248 so that they could have democratic elections and democratic administration of their affairs.

Incidentally, that was not done by the International, and, as a result, this independent group, who now number about 4,700, is now asking for a State board election for exclusive bargaining agent.

That election has resulted at this moment in a vote which is very close, with no majority. The outcome of the election will depend upon challenged votes. There are about 16 challenge votes. This will be determined next Monday.

But the point, so far as this particular section of the brief is concerned, is that these men wanted a democratic administration of their union affairs.

Senator ELLENDER. That is 247 out of 11,000?

Mr. STORY. Senator, I do not—

Senator ELLENDER. I thought you mentioned 247 people had petitioned.

Mr. STORY. I did not say that.

Senator ELLENDER. The report indicates that you said 4,700. I am sorry to have misunderstood you. Proceed, Mr. Story.

Mr. STORY. Yes, sir. That is about half, sir, of those that voted in the election.

Senator ELLENDER. What are they petitioning for?

Mr. STORY. At the moment they are petitioning for a chance to be—this group is petitioning for representation.

Senator AIKEN. You mean, they want to be the bargaining agency?

Mr. STORY. That is right; they desire to be the bargaining agency, rather than local 248.

Senator AIKEN. Are they all former employees?

MR. STORY. They are all former employees. There is not one man, as far as I know, that was not a former employee.

SENATOR AIKEN. Then, this contest is between the UAW and those who would form an independent union?

MR. STORY. That is right. Essentially, it is between those that have returned to work and the other group.

SENATOR ELLENDER. I do not think that it is within the province of this committee at this time to try the Allis-Chalmers case by any means.

However, I notice that Senator Thomas has asked that, at the end of your remarks, a brief be incorporated in the record, and this is presumably the story of the Allis-Chalmers strike.

Now, it goes on to state:

That strike, which is now in its tenth month and which is the biggest strike in the country at the moment, developed directly out of the refusal of the Allis-Chalmers Co. to abide by the laws of the land and put into effect certain recommendations which had been made by the National War Labor Board.

Is that true?

MR. STORY. It is not, sir, the law of the land, first of all. Now, if you will continue with the whole statement, please, sir.

SENATOR ELLENDER. Very well (continuing to read the statement referred to:)

On April 15, 1944, the contract between the company and Local 248 UAW-CIO expired. For 30 days prior to the expiration the union attempted to negotiate a new contract. Its attempts, however, proved unsuccessful. The case was taken before the War Labor Board; and from April 15, 1944, to April 30, 1946, the union and the company operated under the old contract. Despite the fact that the company refused to agree to any of the union's proposals on wages and on a new contract, the members of Local 248 continued to work without any stoppages or strikes.

In September 1945 the War Labor Board issued a directive order concerning vacations. The company appealed this to the National War Labor Board, but the regional board's decision was upheld. The company, however, refused to put the directive into effect in its entirety.

In December 1945 the War Labor Board issued its recommendations with respect to the remaining issues. It recommended the inclusion in the contract of a standard maintenance of membership and check-off clause. This, too, the company refused to apply. In addition, the Board recommended that all workers in the tool and die room be granted a 19½-cent wage increase to bring wages in line with those paid elsewhere in the Milwaukee area. This, remember, was prior to the establishment of the national wage pattern of 18½ cents. But, this recommendation, too, was not applied by the company.

Still, in an effort to settle the dispute, the union proposed that all unresolved issues be settled either through Government fact-finding or through arbitration. It stated that it would accept those conclusions as final and binding, and it suggested that the company do the same.

This offer, too, the company rejected. It has been repeated by the union many times during the course of the strike, but the company refuses acceptance either of arbitration or of fact-finding.

The Allis-Chalmers Co., by the record it has established in this case, stands guilty of having refused to abide by the Government's labor policy, and it alone is responsible for the fact that the workers were forced out on strike and for the fact that settlement has not yet been reached.

What have you got to say to that?

MR. STORY. Well, first of all, the statement, as is customary, with most of the statements which emanate from Local 248, is not the truth in its entirety. It has just enough truth to seem bona fide.

Now, let me point out, please, just what I mean.

First of all, the War Labor Board directive went out on January 1. It had no effect whatsoever.

Now, the War Labor Board was a wartime agency. It could only direct, in any event; it did not set a labor policy, it merely made recommendations in wartime which could be backed up only with sanctions. Otherwise, it would have been compulsory arbitration, which is still contrary to the law.

So, that is my point No. 1, that the Government had no policy and we did not fail to follow a Government policy, because there wasn't any such Government policy.

Senator ELLENDER. But you did refuse to follow the War Labor Board's recommendation?

Mr. STORY. No, not even that is true.

Senator AIKEN. You mean——

Mr. STORY. As I said, the Labor Board had no effect——

Senator AIKEN. I see. You claim that the War Labor Board had no force.

Mr. STORY. That is true. In fact, it had no legal force, although it had a moral force.

I would like to make clear on the record what our wartime attitude was. That would explain a number of things. May I do so?

Senator AIKEN. All right, you may.

Mr. STORY. When I finish this?

Senator AIKEN. All right.

Mr. STORY. They said we did not follow the directive of the War Labor Board recommendations as to vacation with pay.

Now, we actually did follow it 100 percent in its retroactive effect. We did not follow it prospectively because we said it was not even a valid directive at that time.

So, you see, we followed a moral responsibility; there was no legal responsibility.

Now, let us analyze——

Senator ELLENDER. Why would you not accept it for the future, as you accepted it for arrearage?

Mr. STORY. Because the employees—well, we look at the matter from a different standpoint. We looked at the matter from the standpoint of our statement as to wartime compliance with directives. May I read it at this time? I think it will show our attitude.

This is the introduction to our brief in case 211, which was, again, with this local 248. This was a statement before a panel of the National War Labor Board.

I would like to read this. It explained our attitude toward acceptance of directives.

Senator AIKEN. Go ahead, Mr. Story.

Mr. STORY (reading) :

The people of the United States are demanding an all-out, victorious war. They are solidly behind the Chief Executive as their war leader, regardless of differences in political opinion or social philosophies.

The President has appointed this War Labor Board to act as final arbiter in industrial disputes in order to facilitate the war effort. The people demand that

the decisions of the Board be followed by management and by labor. They want output, and they expect the Board to get it.

At the moment, the people do not care whether the decisions made by the Board are sound from the standpoint of the partisans involved or are in terms of fundamental principle. They want no interruption of production.

Public opinion does not now inquire into the merits of the Board's decisions, but when the war crisis has passed these actions will be judged upon the basis of their soundness from long-time considerations.

With such power, the War Labor Board has a tremendous responsibility—the responsibility of maintaining democratic principles and, at the same time, advancing the war effort.

Pronouncements of the Board, based upon the shifting sands of expediency, could cause both destructive social consequences and a future revulsion of public opinion. But, if based upon sound principles of industrial relations and business management, they will advance both the war effort and the continuing improvement of labor relations.

It is with a deep appreciation of the responsibilities of the Board and of the necessity for subordination of private interests to the winning of the war, that our company makes this appearance.

The company has a twofold responsibility: First, to make a comprehensive statement of its position, which will include all necessary and pertinent facts and data so that the Board will be in a position to arrive at a proper decision; and, second, to accept and put into effect the considered judgment of the Board.

Now, it was in line with that expression that we lived up—we lived up to to the expression in that statement.

And, when the Board went out of existence, when there was no war pressure, we refused to accede to the soundness of the War Labor Board's directive, which we think—many of them—were based on the shifting sands of expediency.

Now, we get back to an analysis of the memorandum itself, the anonymous memorandum——

Senator MURRAY. I am sorry; before you go into that, was there any period of time when there was a spirit of cooperation between your corporation and the union?

Mr. STORY. Well, there has been a period of cooperation between our corporation and the union at all times, even up to the present strike.

Our union, whether we like their leadership or not, was the bargaining agent for our employees, whom we do like. They are skilled men with whom we have had pleasant relations, many for 50 years.

So, as far as our relationship is concerned, it was good. We have cooperated.

We have recognized the position of our bargaining agent in spite of their communistic affiliations—which, personally, I am confident, go as far back as 1937.

Now, the complete answer is: We want things for our employees. We want to be fair with our employees. We were fair to them through all that time, in spite of the leadership.

Senator MURRAY. Well, prior to the setting up of the present union in your plant, wasn't there previously a union that was supposed to be dominated by the corporation?

Mr. STORY. Well, let us see if I can answer that question this way: The matter of domination—well, that is a phrase the meaning of which I do not exactly know.

Senator MURRAY. Well, there was a union that was set-up, and in that setting up, the corporation participated in having it established as a union in the industry, in your plant.

Mr. STORY. Senator Murray, I am wondering if I could answer that in full, in connection with the conclusion of our presentation, which goes into that very fully. It gives the complete history.

Senator MURRAY. Well, you may do so in your further statement of your position, but I thought that maybe you would want to say offhand.

Mr. STORY. Well, it is not a fair question in the first place, and so I would rather choose to answer it by giving the whole history and letting you be the judge of Allis-Chalmers' attitude toward unionism.

Senator MURRAY. Well, it is a story, is it not, just of a struggle on the part of the present union to set itself up as the bargaining agency in your plant?

Mr. STORY. Senator Murray, may I ask you where you get that information?

Senator MURRAY. I have no source; I am trying to get it from you.

Mr. STORY. I see. I will answer it very definitely by saying there was no struggle between this company and this union.

We recognized them before they were certified by the National Labor Relations Board.

The only difficulty that they had was the fight with the A. F. of L., and that history I will give you in detail.

The history is that the A. F. of L. came in and were recognized readily. Then, this particular group stole the union away from the A. F. of L.

So, there was no struggle with the company at all. We recognized them without any certification. It was cooperation, instead of a struggle.

Senator AIKEN. Before you get through with your testimony, Mr. Story, there is one thing I would like to know.

You say you have something in the neighborhood of 4,000 employees back at work now. I would like to know how closely the terms of their employment correspond to the demands of the union which precipitated the strike. Are they paid the same wages that the strikers demanded?

Mr. STORY. I can answer that—

Senator AIKEN. In other words, why are they coming back to work? Of course, I suppose that most of them need the work.

But, how closely are they working to the terms that were demanded by the union?

Mr. STORY. We have offered to the union a contract proposal. It is a complete contract proposal.

(The contract was filed with the committee.)

Mr. STORY. We put in that contract proposal the terms for all of the employees who have returned to work.

That includes 13½ cents added to the 5 cents previously, earlier given, to make up the 18½ cents national pattern of wage increase.

In other words, the group that has come back to work is receiving 18½ cents more than they did at VJ-day, which we say meets the national pattern as far as that is concerned.

And, they have the entire benefits of the proposal that we made to local 248. They have not, as yet, selected a grievance set-up, from the standpoint of representatives of the employees.

In other words, we will not recognize the independent group as a union because they have no more right than anyone else at the moment.

Senator AIKEN. They are working as individuals?

Mr. STORY. Well, we allow the individuals to choose their own representatives for the purposes of grievances, but otherwise not.

We do not think it would be fair to do so until the State labor board renders its decision upon the election.

Senator ELLENDER. I think that Senator Aiken has asked a very simple question. Can't you answer it?

Mr. STORY. I did, Senator.

Senator ELLENDER. Well, we do not know what the first offer was. Could you tell us whether or not the offer was better than or worse than what the union asked before you took those men back?

Mr. STORY. At the time the union went out on strike, they made no wage demand specifically. The 18½ cents, we believe, covered it—so, there was no wage demand.

Senator ELLENDER. How about vacation with pay?

Mr. STORY. Vacation with pay they have. We believe it is just as liberal as it was before, and a little more liberal in some respects. It is changed, it is not quite the one that we put in effect retroactively.

Senator ELLENDER. So that, in your opinion, it is your view, then, that the pay and the vacation allowed to the people who are now working for you are just as good as those the union asked for before they went out on strike?

Mr. STORY. Yes, sir.

Senator ELLENDER. That is the answer.

Senator AIKEN. That was last April?

Mr. STORY. Last April.

Senator AIKEN. You do not know what the union demands are for pay at the present time?

Mr. STORY. No; I do not know the second round; I think that is something different, again. As I said, at the time they went out—they made no wage demand; but since that time they have put in a large number of assorted demands, which ran the over-all requested increase to about 45 cents an hour.

Senator MURRAY. Mr. Story, you said that there was no lack of cooperation between your company and the union.

Now, I understood from reports that I have heard about it, that there was a long period of strife between your corporation and the union; and that the La Follette investigation indicates that you employed gunmen and engaged in espionage activities against the union. Is there any truth in that, sir?

Mr. STORY. Senator Murray, have you read the La Follette committee's report?

Senator MURRAY. I have read parts of it.

Mr. STORY. Have you read that which applies to us?

Senator MURRAY. I have read this particular section which says that your company purchased espionage and strikebreaking services of the National Metal Trade Association, of which you are a member.

Mr. STORY. In what period?

Senator MURRAY. Well, in the period of time in which this trouble was going on between your company and the union.

Mr. STORY. Will you name the specific years, please, Senator?

Senator MURRAY. I am not naming any years. I am asking you. You ought to be in possession of all of the information, and you ought to be able to assist this committee.

Mr. STORY. Senator, I think I have the same letter you have in mind. It says 1933, 1934, and 1935, and the total amount for the 3 years—4 years, I guess—was a matter of membership in the National Metal Trades. It was merely membership fees in the National Metal Trades. It was buying nothing except the membership.

Senator MURRAY. But they supplied the services and the assistance and advice?

Mr. STORY. They supplied us, as far as I know, no advice, because we had no labor difficulties from 1916 until 1937, when this leadership came into being.

Senator MURRAY. Please do not get so excited about these things.

Mr. STORY. I am sorry. Thank you, Senator.

Senator MURRAY. We are trying to conduct this on a nice, peaceful basis. We do not want to offend you or hurt your feelings; that is not our intention in asking you these questions.

But if we are going to try the Allis-Chalmers case, and if the statements before the committee are going to be taken up by the committee, we ought to know something about it.

It seems to me that we ought to know everything. It seems to me that we should call in everybody connected with this trouble between your company and the union, and have them all come in and testify in answer to your statements.

On the other hand, I do not know why this committee should try the Allis-Chalmers case at this time.

Senator AIKEN. I do think, Senator Murray, that we are going a little far afield as far as the bills before the committee go.

Senator MURRAY. If we did this in every case, we would be having these hearings for 6 months.

Senator AIKEN. Of course, I am partly responsible for it myself when I asked the question a few minutes ago. I will try to refrain from straying off the proper path from now on.

Mr. Story, you may continue with the testimony which I understand you came here to give.

Mr. STORY. May I respond to Senator Murray by saying that nothing he has said has offended me. I think it is perfectly proper. The emphasis that I add now and then has nothing to do with being offended, because I thoroughly enjoyed your questions.

Senator MURRAY. Did you have any arguments with the union in regard to your failure to cooperate with the Government during the period we were carrying on the rearmament program in this country?

Did you refuse to accept contracts from the Government to manufacture armaments for the preparation of this country to meet the world conditions?

Mr. STORY. As far as I know, we refused no contract that we could fulfill.

I make this point, that we accepted a commission to do work on the atomic bomb that other people refused to take because they were afraid to take the chance.

Senator MURRAY. Was that prior to the war?

Mr. STORY. That was the atomic bomb; that was not worked upon prior to the war.

Senator MURRAY. Well, I am talking about prior to the war—during the period of rearmament in this country.

Didn't your company refuse to accept any contract from the United States Government for the preparation of this country; and wasn't the leadership of your organization engaged in backing America First; and didn't they make strong contributions to America First—heavy contributions to America First?

Mr. STORY. Well, as far as I know, there were no contributions to America First.

Senator MURRAY. Well, wasn't that a subject of controversy between the men in your plant and your concern—your failure to cooperate with the Government at that time in the rearmament program?

Mr. STORY. Senator Murray, our company cooperated with the Government toward rearmament at all times during the war.

Senator MURRAY. I am not talking about during the war, I am just talking about prior to the war, when we were unprepared, and were trying to become prepared to meet the conditions of the world.

Mr. STORY. My answer is that our company did its best to meet its responsibilities prior to the war and during the war.

Senator MURRAY. But it accepted no contracts for war work?

Mr. STORY. It accepted all the contracts that it had an opportunity to accept, within the limit of its ability to produce, in accordance with the promised dates of shipment.

Senator AIKEN. You may go on, Mr. Story.

Mr. STORY. Well, that brings us to section 4, which deals with compulsory unionism.

Compulsory unionism, within the definition of this discussion, covers any contract clause which makes a man's job dependent on good standing in a union.

You will note that I deliberately leave out the question of the closed shop, which has been so obviously bad in the light of our own experience with local No. 3 of the IBEW, New York City. That situation, which has been in the courts, is thoroughly known to all of you, I believe.

I am discussing solely the question of compulsory unionism in industrial plants.

I view compulsory unionism of this type, in the hands of communistic leadership, as being just as dangerous, possibly more so, than the weapon of false propaganda and fraudulent strikes.

Compulsory unionism controls or can control the very lives of employees, through the threat of putting them in bad standing, which means the loss of their jobs, the loss of the means of livelihood, if there is a blacklist, as frequently happens.

To my mind, this compulsory unionism device, if communism makes greater inroads into the leadership of our unions, means the worst

possible kind of dictatorship, and I am concerned because communistic inroads in union leadership are increasing.

I believe that compulsory unionism should be outlawed in order to protect this country, and in order to block a very definite menace to our democracy.

That is a matter, however, for you gentlemen to decide; for Congress to ultimately decide; I speak only by way of recommendation.

Next, let us consider compulsory unionism without reference to communistic leadership control; let us consider it merely from the standpoint of an adjunct to sound trade-unionism.

Sincere labor leaders that I know—and I am proud to say that I can call myself the friend of some—argue for compulsory unionism on three grounds.

The first ground is union security; that is normally the CIO basis of argument.

The second ground is financial security.

The third ground is for discipline purposes.

Let me discuss the matter of union security first.

Union security is an appealing term. It implies the need of protection of a union against certain forces.

What forces can threaten the status of a union as a bargaining agent?

The first force is the employer; the second is a raiding union; the third, the employees themselves, exercising their right of self-organization.

So far as the threat of the employer is concerned, it seems to me that the National Labor Relations Act is thoroughly adequate in providing protection in that area. If it is not, then it should be strengthened to provide protection. I do not believe that is necessary; but if it is, then let the proper measures apply directly from that angle.

Senator AIKEN. You are not arguing against the National Labor Relations Act, then?

Mr. STORY. Not at all, sir.

Senator AIKEN. All right.

Mr. STORY. Second, the raiding union might be a force. Of course, a raiding union might be a jurisdictional affair or an expression of self-organization—another group.

Let us consider the situation of an outside union trying to raid the territory, the preserves, of an exclusive bargaining agent.

Our contract with local 248 has an antiraiding clause which prevents any employee, except in local 248, from union activity on company premises.

Now, that is not due to altruism. There may even be a question of its validity. But from our standpoint as an employer, selfishly we prefer not to have our premises become a battleground for jurisdictional struggles or self-organization. That is why we like to have that kind of a clause in our contract.

That clause has been there for a number of years. It is our way of showing the certified union that we will give them security to that extent. In other words, we will protect them against raiding.

Next we come to the question of protection of the union against the employees.

The National Labor Relations Act has been described as the great magna carta for labor. Labor, to me, means the worker.

So if the magna carta provides for self-organization of the worker, then certainly the union should not be protected against the exercise of the right of self-organization, otherwise the right itself is nullified.

There is another anomaly. The employees are the principals and the union is the agent.

Normally, the principal has the authority to direct the agent. However, in this case there seems to be the desire to hamstring the right of self-organization by making it a one-shot right.

Self-organization means the right to organize, to change organization if they so desire.

Hence the idea of protecting unions against employees is utterly unsound from the standpoint of the magna carta concept of the act itself.

Thus, all in all, the argument of union security is not valid, assuming that the National Labor Relations Act does furnish adequate protection or can be made to do so.

Let us consider the matter of financial security. The claim is made that the unions need compulsory unionism from the standpoint of financial security.

Unions are private associations, organized for the selfish interests of the group that they represent or belong to. They have no right to tax; therefore they must be dependent upon voluntary membership, that is, voluntary support.

The argument is made that hitch-hikers ought to pay their way.

But, Senators, please bear this in mind, that hitch-hiking, except in the area of Government taxation, is a democratic privilege, and as soon as it is made otherwise, democracy goes out.

There is one very important point I have not heard emphasized sufficiently. It is the right of employees to withhold financial support from a union.

That right provides a definite method of controlling the leadership. It is about the only way that employees can control their leadership.

As a matter of fact, that is one of the arguments used against a check-off. It is a sound argument from the employee's standpoint.

We offered the check-off to local 248 because for selfish reasons we do not want a lot of collecting on the company's premises.

From the standpoint of the employees, they should have the right to decide whether or not they will pay the dues.

But, suppose the union is clothed with the right to tax. If you do that, you would be obliged, properly so, to decide how the union's funds were to be spent; that is, for political purposes or purposes contrary to normal union activity.

If that were done, it would mean that the expense account of union representatives would have to be checked by Government to determine whether the union's funds were properly spent; otherwise it would not be fair to the employees.

If the Government made the employees subject to a tax by their unions, then the employees would be entitled to the protection of the Government in seeing that that tax is spent for their benefit.

The third point involves the matter of the discipline of members by union leadership.

Discipline implies the subservience of the principals, the employees, to the union, their agent. It is a complete perversion of the basic theory of the National Labor Relations Act, namely, that the employees, being the principals, are legally able to direct their agents.

If the employees are to be disciplined by their agent, then this great Magna Carta of the National Labor Relations Act is a fraud and delusion, because the employees would have no right of self-organization, if they could be disciplined when they tried to exercise their right of self-organization.

Accordingly, on the basis of the analytical considerations which I have given you, it is clear that compulsory unionism is not a proper adjunct to sound trade-unionism.

Gentlemen, you have a tremendous labor problem before you; you have the problem of the tremendous power of the large unions and of their possible control by Communist groups. That possible control makes it a crucial problem in connection with compulsory unionism.

The first question for you to decide—and it is a big one—is whether compulsory unionism should be outlawed because of the Red menace. That requires much more investigation than testimony at the hearings of this committee.

Today I am giving you merely my experience. There is available to you a vast amount of information on the subject of communistic activities. The Government itself now is expelling Communists from civil service, or trying to do so. There must be a vast amount of information which will give you a clue as to whether or not my belief about the Red menace has any foundation.

If you decide that there is no menace of communism in labor unions, then you are confronted with a broader question of policy, basic public policy: Whether compulsory unionism should be outlawed because it is not a sound adjunct of our national labor policy.

In the alternative, you must meet face to face the question of making compulsory unionism a governmental policy for the country, with the controls necessary to prevent the abuses that everyone knows about.

Furthermore, union security, under compulsory unionism, would tend to perpetuate union leaderships. Senators, I have the feeling that if there were a bill introduced advocating the establishment of compulsory unionism as a clause in every collective-bargaining agreement with proper controls, there would be such a storm of public opinion—as evidenced by recent polls—that this question of compulsory unionism would be settled, once and for all in the negative.

This country, sooner or later, must make up its mind whether it is going to have compulsory unionism or not. If it is a sound thing, let us have it; if it is unsound, let us outlaw it, so that the country will be freed from continual strikes on the issue of the closed shop—compulsory unionism. Our 76-day strike involves that single issue. Thus, if the question before you were decided, presumptively that strike would never have occurred, fraudulently or otherwise.

Have you any questions?

Senator AIKEN. Senator Ellender?

Senator ELLENDER. No.

Senator AIKEN. Senator Murray?

Senator MURRAY. No.

Senator AIKEN. No questions.

You may proceed with your next point, Mr. Story.

Mr. STORY. May I just add this information, pertinent to Senator Murray's question?

Prior to June 21, 1941, local 248 opposed preparedness. In other words, it followed the party line of Russia. It followed that party line in the strike in January 1941 for 76 days.

After the fraudulent ballot was discovered, Secretary Knox and the OPM, through Director Knudsen, appealed to our people to return to work because of the preparedness contracts in our plant.

The union caused the riot of April 1 of that year, in answer to the appeal for governmental help by way of preparedness.

Senator MURRAY. Was your company at that time seeking or negotiating contracts with the Government for war production or for production of armaments for the country?

Mr. STORY. We had been negotiating with the Government for contracts long before that time, Senator.

Senator MURRAY. Well, then, how could this statement be made, that your company had refused to accept any contracts during the period prior to the war when the country was rearming?

Mr. STORY. Well, may I answer it this way: In connection with my request for some sort of legislation to provide a forum for discussions of such matters, I stated that lies can be uttered very readily, particularly by a Communist leadership. That is their technique, and I assume that is what happened.

Senator MURRAY. Well, of course, there are so many statements in the record here in connection with your testimony which will require the union to come here if it wants to answer these charges, it will have to spend a day or two going over the testimony you have given for the purpose of determining what part of it is true, in their judgment, in accordance with their ideas of what the facts are.

It seems to me that we ought to be able to discuss this problem which is before the committee, without having to go into all the details of your quarrels and disputes and misunderstandings with the union during all of these years. I should think we ought to be able to get at our problems without having all of these details.

If we have to do this in every instance where a representative of a corporation comes in here and goes into all the past history of his dealings with the unions, then we will never get through.

Senator AIKEN. Go ahead, Mr. Story. We have three more witnesses this afternoon and three more tomorrow.

Mr. STORY. Well, may I hurry right straight through, Mr. Chairman?

Senator AIKEN. Yes; I was going to suggest that perhaps you can take another 20 minutes, and give the other witnesses time for their presentations.

Mr. STORY. I come to section 5, which is the right to work.

In that connection, the leadership of local 248 over the years has put on a program of vilification, in order to build up a psychology

of reluctance on the part of our employees to return to work, whether they went out on strike voluntarily or not.

And, when this technique was not successful in the last strike, they tried violence. If you will look at exhibit No. 4, you will see pictures indicating the violence.

Study of the chart, which is exhibit No. 5, will disclose interesting data concerning violence and its effect on the exercise of the right to work.

You will see [indicating] that the back-to-work movement was progressing to a point of about 2,800 employees out of 11,000 back at work on October 28. There was extreme violence on that date, and just a few policemen.

Public opinion gradually became aroused; public opinion demanded that the right to work be protected. As a result, enforcement officers were called in. The 30 West Allis police, the maximum available, was augmented by other enforcement officers of the county.

You will see on that chart [indicating] an immediate rebound and a climbing up to the date of about November 25, when there was another large demonstration and riot.

Again, there was adequate protection and the exercise of the right to return to work increased from day to day.

The worst 2 days were probably the 2 days in December, which you will see marked up here [indicating]. There was adequate enforcement and protection and the right to work was exercised increasingly from that time on, so that last Wednesday there were over 4,700 employees, belonging to the unit represented by the Communist leadership of local 248 were at work under the terms of the contract proposal that I mentioned to you.

I assert that the right to work is a right which has as much dignity and stature, and is entitled to as much protection, as the right to strike.

It seems to me that the National Labor Relations Act should be amended by prohibiting mass picketing, and any interference with the right to work, in order to properly reflect public opinion, which is rising all over the country against strike violence by communistic agitation, particularly in Milwaukee, as a consequence of our strike.

Any questions?

Senator AIKEN. Senator Ellender?

Senator ELLENDER. No questions.

Senator AIKEN. No questions.

Mr. STORY. Then, I come to section 6, industry-wide bargaining.

Industry-wide strikes are a corollary of industry-wide bargaining.

Industry-wide bargaining is a "natural" for international unions having communistic leadership. It means the possibility of the communistic leadership tying up industry from coast to coast.

The pathetic condition of France shows this.

Industry-wide bargaining is the end of democratic town-hall unionism, where the individual counts.

The foregoing is a quick rationalization. The following experience with the Allis-Chalmers strike has a bearing, it would seem to me.

We have eight plants. One plant did not go out on strike when the strike was called by a so-called council headed by local 248. At the present time all strikes have been settled except the West Allis strike.

If there had been but one union for all the plants, undoubtedly all the plants would still be on strike because the majority—as to numbers—is in the West Allis union.

So, the smaller unions, the wishes of smaller groups, are completely wiped out and merged in the wishes of a leadership controlling the activities of an industry-wide bargaining unit.

Any questions?

Senator AIKEN. Senator Ellender?

Senator ELLENDER. No.

Senator AIKEN. No questions.

Mr. STORY. Section 7, the Wisconsin Employment Relations Act.

Now, the Wisconsin Employment Relations Act has worked. It has functioned in the matter of stopping mass picketing. That was done, in connection with mass picketing with two hearings. There is no question but those hearings had a great deal to do with arousing public opinion, because it showed the public the facts.

The National Labor Relations Act is being utilized by the unions. I have with me cases, one CIO and one A. F. of L., two cases where unions used the act in order to gain their ends for failure of the employers to live up to collective-bargaining agreements. They selected the act, instead of the courts, because it was so much more speedy.

The same question of a violation of a contract could be considered by the courts under the Wisconsin law. There is a reason why people selected the Wisconsin act.

First of all, the Wisconsin act provides a code of conduct not only for the employer, but for the employees, the unions, and all interested third parties. It provides a code of fair conduct in the field of industrial relations.

It has a judicial procedure whereby one party files a complaint alleging an unfair labor practice. The other party makes an answer and the board, sitting as a judge, makes the decision.

Senator AIKEN. Is the decision of the court binding on both parties, Mr. Story?

Mr. STORY. It is binding on both parties. There is an appeal to the circuit court and it can be tried de novo there.

Senator AIKEN. The question arises in my mind, and I presume it arises also in other minds, Why didn't it settle the Allis-Chalmers strike?

Senator ELLENDER. Yes; that is what I want to know.

Mr. STORY. May I answer that question?

Senator AIKEN. I take it, Mr. Story, you will agree that is a natural question for us to ask, we not being familiar with the whole situation.

Mr. STORY. Yes. It is settling the Allis-Chalmers strike, let me put it that way.

Senator AIKEN. You mean it is settling it now?

Mr. STORY. It is settling it, because it has blotted out the violence connected therewith, and, as a result, they are going back to work. Also, within a few days there will be a decision on the certification; that will be settled.

Senator AIKEN. As the result of a court order?

Mr. STORY. As a result of the board's action.

Senator AIKEN. Did you appeal to the court?

Mr. STORY. We had no part in this.

Senator AIKEN. Then, who did appeal in order to precipitate the board's action?

Mr. STORY. This group that I was talking about in answer to Senator Murray's question. They wanted to have democratic administration; they could not get it there, so they went to the board, to have a certification election. Do I make myself clear?

Senator AIKEN. No.

Mr. STORY. There are two groups of employees.

Senator AIKEN. I see.

Mr. STORY. Those who, apparently, wish Local 248; and those who, apparently, wish something else. The second group appealed to the board for an election.

Senator AIKEN. Yes.

Mr. STORY. And, there was an election held. At the moment there is no majority, on account of the challenged votes as I said.

Senator AIKEN. Yes. Well, then, the appeal to the Wisconsin court was taken by the independent workers, or those who are not affiliated with the UAW?

Mr. STORY. The independent union took the appeal to the State labor board, not the court.

Senator AIKEN. Well, I am technically in error there, I see. And, that is how it precipitated the court's action, the court order, which you say is being effective in settling the strike?

Mr. STORY. It is not a court order, it is the board's order.

Senator AIKEN. The board's order.

Mr. STORY. The election was held on order of the board, and both unions participated in it.

Senator AIKEN. But, it does have the force of law?

Mr. STORY. I believe it does; yes.

Senator AIKEN. All right.

Mr. STORY. Now, there are two major weaknesses of the National Labor Relations Act: The fact that it provides a code of conduct for employers only, and not the other interested parties: secondly, the procedure is inquisitorial, rather than judicial.

My recommendation is to apply the structure of the Wisconsin law to the National Labor Relation Act. I am not saying to take all the detailed provisions but take the framework that is a code for all three parties, with such unfair labor practices as you gentlemen select. But follow the theory of the Wisconsin act, in providing an all-around unfair labor practice code. Then, make the administrative procedures judicial, not inquisitorial. The National Labor Relations Board can readily function with its present regional office and personnel set-up.

Any questions?

Senator AIKEN. Senator Ellender?

Senator ELLENDER. No questions.

Senator AIKEN. No.

Mr. STORY. I might say here that the Wisconsin act provides all the protection against the employer that the National Act does, and in addition one or two more provisions.

Senator AIKEN. Would you set up Federal courts for labor?

Mr. STORY. I would not, sir. I do not think there is any need to change the National Labor Relations Board set-up, except to change the procedure and make a real court out of it. The regional set-ups are available right now; there are trained men available to conduct hearings. Just make them judges instead of prosecutors. It is a very simple change-over.

Senator AIKEN. Proceed, Mr. Story.

Mr. STORY. The next is section No. 8, the definition of collective bargaining. This is all on Senator Ball's bill, S. 360, section 5 (b) (2) and (c). It contains the requirement that the parties "meet and confer."

The bill accomplishes two results, important results. First, it prevents the Board from injecting itself into the area of collective bargaining by a kind of compulsory arbitration.

Secondly, the union is required to assume the same obligation as the employer "to meet and confer."

We had an interesting experience on July 24. The union refused to bargain, it refused to meet with us. We asked them if they would not bargain by correspondence, and they refused to do that.

We petitioned the National Labor Relations Board—that is set out in exhibit No. 8.

We asked the Board to require the union to meet with us or lose their right to act as agent, if they were not meeting their responsibility.

Senator AIKEN. When was this done?

Mr. STORY. August 1, 1946. It was about a week after their refusal to bargain.

Senator MURRAY. Did the union at any time offer to settle this whole matter by arbitration? Did the Milwaukee County Board of Supervisors call upon the corporation or the unions to get together and submit the matter to arbitration?

Mr. STORY. They did.

Senator MURRAY. Did you refuse to accept that?

Mr. STORY. We did.

Senator AIKEN. You asked to meet with the union for the purpose of collective bargaining?

Mr. STORY. Yes, sir.

Senator AIKEN. And they refused?

Mr. STORY. They refused. We petitioned the Board to make them meet; the Board refused.

Senator AIKEN. They wanted to arbitrate and you wanted to bargain collectively; and the other side refused in both cases.

Mr. STORY. Mr. Chairman, the offer to arbitrate was, I think, at a later date than that; but it is needless to say that compulsory arbitration is no part of negotiation.

Senator AIKEN. Well, you get the results of the election next Monday, of the recent election?

Mr. STORY. Yes.

Senator AIKEN. And then, whichever side wins, are you still willing to meet and bargain collectively with them?

Mr. STORY. We are obliged to, as a matter of law, we cannot get out of it.

Senator AIKEN. Yes; but do you expect to?

Mr. STORY. Certainly; we will meet just as soon as the bargaining agent is selected.

Senator AIKEN. And you will make an effort to get together and reach an agreement?

Mr. STORY. We will attempt to negotiate.

Senator AIKEN. I think that the whole country will be very happy if you do; particularly the farmers, who comprise most of my State will be very happy if you can reach an agreement.

Mr. STORY. May I, for the record, say that my experience indicates the necessity for Senator Ball's amendment, covered by this definition of collective bargaining.

Any questions?

Senator AIKEN. Any questions?

(No response.)

Mr. STORY. I come to section 9, supervisory employees. I think I will skim over that very fast, by saying that we feel that you cannot divide a management group without destroying it.

For that reason, we do not believe that there should be any right of collective bargaining by any one group within the management group. We feel very strongly about it.

Our experience with management functioning as a management group indicates to us very clearly that you will destroy the efficiency of management if you have bargaining within the management group.

Any questions?

Senator AIKEN. Senator Ellender?

Senator ELLENDER. No questions.

Senator AIKEN. No questions.

Mr. STORY. As to the Conciliation Service, section 10, I think that we will be much better off if they were separate and distinct from the Department of Labor.

We had experiences in this last strike which indicated to us that there was a concerted movement to have conciliators called out at all plants; that is, called away from conciliation at all plants, in order to make it appear that there was a refusal on our part to bargain, and thus provide the basis for seizure.

We have full information on that if the committee wishes to go into it.

Any questions?

Senator AIKEN. Any questions?

(No response.)

Mr. STORY. Can I have about 5 minutes more, Mr. Chairman?

Senator AIKEN. Yes, indeed.

Mr. STORY. Long before the National Labor Relations Act was written, Allis-Chalmers voluntarily recognized and accepted collective bargaining.

The company's record and attitude toward the bargaining representative of its production employees has been characterized by wholehearted recognition and acceptance of its proper functions.

This is proved conclusively in exhibit No. 9, which is referred to in my brief, which contains an excerpt from the company's statement

to a panel of the National War Labor Board in the company's 1942 appearance before that body.

Local 248 never has refuted this statement, and in that case (NWLB No. 211) the National War Labor Board's panel stated:

Every other claim of the unions (local 248) purporting to prove that the management pursued an antiunion policy has been tracked down, with the same result (complete failure of proof on the part of the union). The panel members are not unfamiliar with antiunion practices, and they believe they could detect them if they existed, especially after 20 days of hearings and many more days of investigation. [Parenthetical statements added.]

On the other hand, the leadership of local 248, following a typical Communist technique, has deliberately exerted every effort to thwart an understanding between management and employees.

Thank you, gentlemen, for the opportunity of having been with you.

Senator AIKEN. Any questions, Senator Ellender?

Senator ELLENDER. No questions.

Senator AIKEN. Senator Murray?

Senator MURRAY. I would like to ask one question.

Is it your statement or the statement in your brief that all of these officers and members of the unions that you have referred to are Communists; or are you merely asserting that the newspapers and others have charged them as being Communists?

Mr. STORY. I am asserting that it has been my opinion, and has been my opinion since 1937, that this leadership was Communistic, in the term or within the definition I gave you in the earlier part of my statement.

Senator MURRAY. It is your opinion, as distinguished from your actual knowledge of the facts?

Mr. STORY. Well, I have no knowledge, as I told you, Senator Murray, because unless you are with a Communist in a meeting, you cannot know whether he is actually a Communist. I only judge on the basis of his actions. If he acts like a Communist, if he follows the party line; in other words, if he is a "duck" of communism, I assume that he is a Communist.

Senator MURRAY. You have not given us any definition of "party line." I do not know what you mean by "party line."

Mr. STORY. You will find that the party line is following all the changes which we assume are dictated from Moscow.

Senator MURRAY. And you think that all of these fellows are following party lines dictated from Moscow?

Mr. STORY. Well, let me give you an example, one from a number of different ones.

Up to the time that Russia went to war with Germany, the leadership of this union, in its newspapers—this is all in the documented data and exhibits which I have given to you—went along damning Mr. Roosevelt, damning Mr. Hillman, damning anybody who was preparing for war. They were against conscription, they were against preparedness.

As soon as the party line changed, as soon as Russia went into war with Germany, they were all for preparedness, all for conscription, all for a second front; in other words, for everything that Russia needed.

That is what I mean, Senator, by following the party line.

Senator MURRAY. Mr. Chairman, at the close of the testimony of Mr. Story, I would like to have inserted in the record a statement by the Honorable Melvin Price, Member of the House of Representatives from Illinois, appearing on pages A-268 and A-269 of the Congressional Record, Appendix, January 23, 1947.

Senator AIKEN. Without objection, the statement from the Congressional Record will be inserted in the record at the close of Mr. Story's testimony.

Likewise, there will be inserted Senator Thomas' statement; also, a copy of the letter which Mr. Story has written to Philip Murray, that might well go into the record at that point. (Subsequently Senator Ball received permission to insert into the record a statement by Hon. Charles J. Kersten, Member of the House of Representatives, from Wisconsin. The statement appears at the conclusion of Mr. Story's testimony).

Just one thing more. I have been wondering, Mr. Story, if the leaders of local 248 are Communists, as you believe, why it was that Allis-Chalmers was selected as the target for a Communist attack?

Mr. STORY. We are the largest company in the State of Wisconsin; we are a pivotal company from the standpoint of national defense; we are a pivotal company from many angles.

We compete favorably, from the standpoint of heavy machinery, with the companies like General Electric and Westinghouse.

Senator AIKEN. Yes.

Mr. STORY. We compete with International Harvester.

Senator AIKEN. Yes.

Mr. STORY. In other words, we have a varied line of products. We would be a very good company to knock out in time of war; a very good company to control, for a good many other reasons.

Senator AIKEN. Have you any orders from the Russian Government?

Mr. STORY. No, sir, have not had any for a number of years.

Senator AIKEN. Have you been offered any?

Mr. STORY. I do not know that, Mr. Chairman, but I know we have not solicited any for, oh, 20 years. We had one order.

Senator AIKEN. All right, if that concludes your testimony, we thank you, Mr. Story.

(The following brief was submitted by Mr. Story:)

STATEMENT OF HAROLD W. STORY, VICE PRESIDENT, ALLIS-CHALMERS
MANUFACTURING CO.

My name is Harold W. Story, and my home address is 2924 North Shepard Avenue, Milwaukee 11, Wis.

I am vice president of Allis-Chalmers Manufacturing Co., with which I have been associated since 1919.

I have acted in the following capacities:

Member, State advisory committee on workmen's compensation.

Member, State advisory committee on unemployment compensation.

Special consultant to industrial commission on unemployment compensation.

Present member, State Advisory Committee of Wisconsin Employment Relations Board.

Special consultant in drafting administrative features of the Wisconsin Employment Relations Act.

Labor relations adviser to the company's vice president in charge of manufacturing from 1933 to 1941.

Chairman, company's negotiating committee from 1937 to 1941.

Executive adviser to the company's negotiating committee in present strike.

In charge of the company's impartial referee proceedings.

In charge of the company's legislative work from 1921 to date.

Legal adviser to company's employees from 1921 to 1930.

Your committee has a tremendous responsibility in considering the many matters before you which so vitally affect the welfare of our country.

I appreciate the honor of your invitation to express my views.

ORGANIZATION OF BRIEF

This brief is divided into two parts.

The first part deals with the misuse of the tremendous power possessed by certain union leaderships and needed legislative controls which would not impede the progress of sound trade unionism.

The second part contains comments upon particular legislative proposals in the area of labor relations designed to improve present labor laws by providing a better balanced long-term legislative program.

PART I. DISCUSSION OF MENACE TO DEMOCRACY THROUGH MISUSE OF POWER OF UNIONS BY COMMUNISTIC UNION LEADERSHIPS, AND NEEDED LEGISLATIVE REMEDIES

Introduction

The greatest menace to our democratic form of government is the misuse of the tremendous power which certain union leaderships have acquired during recent years.

This threat is directed by two types of union leadership.

First, the leadership whose aim is to advance the cause of communism by a fifth-column operation in the cloak of trade-unionism, and second, leaderships motivated by (1) overwhelming personal ambition, or (2) fanatical zeal, but without seasoned and sound judgment.

When the power of democratic government for the common good is challenged by either type of union leadership, the very existence of democratic government is threatened.

Under such circumstances, the inevitable reaction of government would be to fight for the maintenance of its position of authority and power.

In so doing, the Government might be forced to the use of dictatorial power. Whether this power took the form of fascism or communism would be of only relative importance. In either case, American democracy would be endangered, if not destroyed.

So the aim of this Congress should be to protect the country against misuse of power by these union leaderships by enacting legislation which would (1) preserve and protect the rights of employees to organize for the purpose of collective bargaining, and (2) at the same time curb the power of these union leadership in their disregard of democratic rights of employees and the public.

The legislative remedies must function like the recently discovered chemical which kills the weeds but does not harm desirable grass.

Thus, they must eliminate the destructive weed of communistic intrigue without harming the healthy turf of trade-unionism.

Communism the real menace to democracy.—The misuse of power by union leaderships because of personal ambition or fanatical zeal is merely evidence of human frailty. This is no more evidence of lack of Americanism than the misuse of power by industrial leadership in another era.

This abuse of power is ultimately amenable to the force of public opinion and reasonable governmental regulation. It is not the real menace to our democracy but, instead, is a passing phase of democracy.

The real menace to our democracy is the communistic leadership of labor organizations.

The avowed aim of communism is a world dictatorship of the proletariat. Since the United States is considered to be the principal obstacle to this purpose, communism is using every means at its command in the way of deception, defamation, high intrigue, and the fostering of hate and suspicion and dissension in order to weaken the United States internationally and at home.

As a means of weakening this country at home, communism is utilizing the labor movement and labor unions wherever it can.

The above statement is based upon by actual experiences with the leadership of local 248, UAW-CIO, over the last 10 years.

The leadership of local 248 is communistic.—On the theory that “birds of a feather flock together” and that “by their fruits ye shall know them,” the term “communistic leadership” is intended to mean not only a leadership composed of Communists, but one composed of persons who are associated with Communists and who follow the Communist Party line.

In order to determine the character of the leadership of local 248, let's examine the record.

In four articles appearing on September 22, 23, 24, and October 6, 1946, the Milwaukee Journal stated unequivocally that Robert Buse, president of local 248; Joseph Dombek, vice president; and Harold Christoffel, honorary president, are Communists.

The Milwaukee Sentinel, in a series of articles from September 23 to November 21, 1946, stated that the following members of the official family of local 248 are either Communists or party liners:

Members of the bargaining committee.—Harold Christoffel, honorary president; Robert Buse, president; Joseph Dombek, vice president; Linus Lindberg, financial secretary; Fred McStroul, recording secretary; Charles Fisher, John Kennedy, Arne Hansen, Herbert Nagi, John Kaslow, Alfred Ladwig, Emil Mattson, Leslie Roth; and 22 other union stewards and committeemen.

The Communist connections of local 248 leaders is conclusively demonstrated in the carefully documented memorandum attached as exhibit No. 1.

The brochure prepared by the company entitled, “Principle Represented: Communist,” attached as exhibit No. 2, shows the leaders of local 248 and leaders of the Communist Party in Wisconsin associated together in the political advancement of communism.

The memorandum contains photostats of the nomination papers of the Communist candidate for Governor of Wisconsin in a recent election bearing the signatures of the following officers and representatives of local 248:

(1) Robert Buse, president, local 248; Joseph Dombek, vice president; and, in addition, a majority of the top-ranking officers, including the financial secretary, treasurer, sergeant at arms, and others.

(2) A majority of the staff of the union's official strike publication, The Daily Picket.

(3) The attorneys who customarily represent local 248.

(4) All of the prominent members of the “educational committee” of local 248.

(5) About 40 percent of the stewards of local 248.

In addition, on these nomination papers appear the signatures of well-known Communists, namely, Fred Bassett Blair, head of the Communist Party in Wisconsin, and Elizabeth Blair, secretary of the Milwaukee County Communist Party.

Thus the record clearly shows that the leadership of local 248 (1) is openly charged by reputable newspapers as communistic, (2) has communistic associations, (3) has supported Communists for public office, and (4) is faithfully following the Communist Party lines.

Therefore, under our above-stated definition, local 248 leadership is communistic.

Local 248 is the tool of communism.—Local 248 was organized and has operated not primarily as a bona fide labor organization to achieve and protect the rights of workers, but as a tool of the Communist Party (a) to propagandize the workers and the entire community with the Communist line dictated by Moscow, and (b) to impede or foster the production of machinery and equipment for the defense and welfare of the United States precisely as the Communist International has dictated from time to time.

In support of the foregoing statement, the attached exhibit No. 3, entitled “How Local 248 Has Been Used as a Tool of Communism” sets forth documented proof of the following:

1. Local 248 was formed by the Communist Party in Wisconsin in 1936, not as a bona fide trade union, but specifically to serve the ends of the Communist Party. It has been attempting to crush all rank-and-file opposition to its policies and to perpetuate Communist control.

2. Communist cells have been established in the shop.

3. Local 248's publications contain much material reprinted from Communist publications.

4. Local 248 has sponsored subscription drives for, and has otherwise encouraged, Communist publications.

5. Local 248 has advertised and promoted attendance at Communist schools, and has used material and instructions from such schools in its leadership training courses.

6. The vast majority of speakers at local 248 meetings have been Communists.

7. Local 248 has frequently shown Communist films at its meetings.

8. Local 248 has maintained close relations with, and given support to, local Communist-front organizations.

9. Officials of local 248 have participated in public activities of the Communist Party.

10. Local 248's written and verbal propaganda has consistently adhered to the Communist Party line on all political issues, including the Communist Party stand on aid to Britain, conscription, attitude toward President Roosevelt and other national leaders, a second front, Poland, American troops in China, and American peace policies.

11. Local 248 supported the party's opposition to the national defense program by a fraudulently called 76-day strike in 1941.

12. Local 248 officials have lent public support to Communist candidates for public office.

13. National labor leaders have charged that the leaders of local 248 are Communists.

An interesting sidelight is that the unions which tied up the company's other plants for many months in 1946 are affiliated with the United Electrical, Radio and Machine Workers, and the Farm Equipment and Machine Workers, both reported to be Communist-dominated internationals of the CIO.

All of these unions collaborated with local 248 in a strike strategy council until rank and file pressure became so great that one by one the other locals were forced to abandon the strike in order to save themselves.

Legislative approach to problem of menace of communism in unions.—There are two legislative approaches to the problem of controlling the menace of the communistic leadership of labor unions.

I am opposed to the approach which would bar Communists and party liners from any participation in union activity.

This approach should be quickly discarded because of its obvious unsoundness unless a national emergency exists presenting different problems.

If this were done it would mean that in an endeavor to preserve our democracy we would actually be destroying it by adopting the "liquidating" dictatorship tactics of Soviet Russia.

The other approach—and a sound one—is to apply the "weed killer" technique of providing, through legislation, adequate means of preventing the destructive use of labor organizations by communistic leaderships without harming the development of constructive democratic unionism.

The following sections of part I of this brief will contain a discussion of various particular dangers of Communist leaderships and specific recommendations for legislative remedy.

Section 1. False propaganda

One of the Lord's commandments says "Thou shalt not bear false witness against their neighbor."

Yet, over the years, the leadership of local 248 has followed the consistent policy of attempting to undermine the company's friendly relations with its employees by means of falsehoods and distortions of the truth.

Mr. Hitler in his *Mein Kampf* stated, in effect, that the bigger the lie the more likely it is to be believed.

The communistic leadership of local 248 has borrowed from the teachings of Mr. Hitler.

Here are some typical examples of the false propaganda of the leadership of local 248.

Example No. 1 (false propaganda to influence strike vote).—On April 25, 1946, immediately prior to the current strike, the union distributed a flyer designed to mislead employees into supporting the strike planned for April 29.

The flyer by innuendo, half-truths, direct misstatements, and deliberate falsehoods claimed that the company was taking away seniority rights; was discriminating because of race, color, creed, sex, marital status, religious or political beliefs; was planning to discharge workers without cause and without oppor-

tunity of appeal to the impartial referee; that the company was removing protection of the previous contract which insured maintenance of rates of pay of hourly and piecework workers; and destruction of the right of employees to raise grievances under the contract.

Example No. 2. In the union's Daily Picket, November 1, 1946, it stated: "It is obvious that there are not many scabs in the plant. Their ranks are being augmented daily by professional goons and strike-breakers—individuals whose business it is to carry lead pipes, guns, and other weapons, and who make their living by starting trouble."

The statement is an utter falsehood.

Example No. 3.—The Daily Picket, January 21, 1947, stated:

"In the coming election the company hopes to get the company union it has set up to win the bargaining rights. If this would happen, the company would sign a contract with the company union, selling out all the rights you have in the shop, cut off piecework bonuses, and force you to work for a starvation wage. Only a victory for local 248 will protect your rights and get you the wage increases to which you are entitled."

Of course, the statement was an unadulterated fabrication.

Example No. 4.—The Daily Picket, January 15, 1947, and the Wisconsin CIO News, State edition, January 17, 1947, stated:

"The Allis-Chalmers Co. is losing lots of money because of the strike. It would like to see the strike ended—but on its terms, not on the workers' terms. So it set up an 'independent' (company) union and demanded an election. *If it wins, the strike will be over and everybody will lose but the company and a few stooges in the company union.*

"Hundreds upon hundreds of workers will lose their jobs because they stood up and talked back when the company tried to pull a few fast ones.

"Out of the window will go job security and the seniority system.

"Grievances will end one way—in the company's favor.

"Their will be no protection against rate cutting on piecework jobs. There will be nobody to fight for guaranties on piecework. There will be nobody to fight for promotions. There will be nobody to fight for back pay or for wage increases. There will be nobody to fight against favoritism and apple polishing." [Italics added.]

These statements are a tissue of falsehoods and distortions.

Example No. 5 (designed to destroy employee confidence in company).—In the Daily Picket, January 10, 1947, appeared the following:

"Your wages, working conditions, and bargaining rights are being threatened. They are being threatened by the Allis-Chalmers Co. through its company-inspired, so-called 'independent' union and through the illegal acts of the Wisconsin (company union) Employment Relations Board.

"Your union does not want to frighten you with the possible disastrous effect this may have on your livelihood, but your union does want to make you aware of the dangerous fact that if the company's plot is not stopped you and your family will have your living standards cut and slashed."

The italic portions in particular contain vicious falsehoods.

Example No. 6.—The Daily Picket of January 17, 1947, stated:

"1. Freedom to raise grievances.—Through the grievance machinery set up by local 248, A-C works have full freedom to raise grievances of all types without fear of reprisal or intimidation by the employer. *This privilege the company, in its current proposals, wants to take away. As long as local 248 is your bargaining representative this freedom will be guaranteed."*

* * * * *

"You are faced with the challenge of a viciously antilabor company, hell-bent upon destroying your legal rights as citizens and workers; determined to deprive you of your right to bargain collectively for better wages and working conditions; intent upon smashing your union, cutting your wages, destroying your seniority system, and your job security, depriving you of the right to file grievances."

This is another piece of false propaganda obviously intended to create employee hatred of the company.

Example No. 7.—In the Daily Picket of December 2, 1946, appeared the following:

"Do you know that under the company's grievance proposal they could (and have) cut your rates and you have no right to appeal to an impartial referee in case of an unfair rate cut? You as a scab are sabotaging Local 248's fight to provide its members with a free and adequate grievance procedure."

The statement is just another lie.

Example 8.—In the Daily Picket of November 14, 1946, appeared the following: "Our fellow members at the Allis-Chalmers plant in Milwaukee * * * are seeking the same 18½-cent wage increase granted to Ford, Chrysler, and the bulk of our other locals last spring. * * *"

This is a deliberate lie. The company offered an 18½-cent wage increase in accordance with the national pattern *prior* to the strike.

The foregoing are but a few typical examples of the kind of false propaganda being constantly poured out by the communistic leadership of Local 248.

The libel laws are inadequate to protect against the vicious attacks of this kind of false propaganda. Moreover, judicial procedures are too slow to be effective.

Thus, the employer's only defense is counterpublicity. But counterpublicity is not effective. The Communist expert in the psychology of false propaganda knows that defensive publicity is not impressive and does not, in fact, counteract the effect of false propaganda.

The only effective defense would be the speedy determination of the truth or falseness of propaganda by an impartial judicial agency and immediate publication of the official decision.

The official pronouncement of a judicial agency upon a complaint alleging the untruthfulness of any public statements by a communistic union leadership would, when properly publicized, be an effective defense against false propaganda.

It would require only a few judicial pronouncements showing the untruthfulness of false union propaganda to convince employees that their bargaining agent was unreliable in his statements.

Accordingly, I recommend legislation to establish a procedure whereby complaints of an employer as to the untruthfulness of propaganda of the union leadership (or vice versa) could be passed upon.

With a slight change in the procedure of the National Labor Relations Act, the making of untruthful statements by a union against an employer (and vice versa) could be made an unfair labor practice and, upon filing of a complaint by either party, be determined by the National Labor Relations Board.

The establishment of a procedure of this kind is one of the most important legislative methods of curbing the communistic technique of filling the air with false propaganda.

It's doubtful that anyone could dare to say that living up to one of the Ten Commandments would harm sound trade-union activities. As a matter of fact, it should increase the dignity and the strength of the labor movement.

Section 2. The supervised secret strike ballot

The strike is the most effective weapon of a communistic leadership for the purpose of (1) promoting industrial strife, class hatred, and general unrest of the industrial workers in time of peace and (2) stopping American production in time of war.

For that reason proper legislation to curb the menace of Communist political strikes is vitally necessary.

The communistic leadership of Local 248 came into the Allis-Chalmers picture in 1937. Since that date, Allis-Chalmers has had to cope with strike threats each year except those when Hitler was at war with Russia.

The leadership of Local 248 actually called strikes in 1939, 1941, and 1946.

The strike in 1941 was clearly intended to slow up national defense, because the United States Navy reported that its destroyer program was delayed over 6 months in consequence of that strike.

The 1941 strike was called after a fraudulent strike ballot.

Two outstanding handwriting experts of the country, namely, Clark Sellers and John F. Tyrrell, conclusively proved that the 1941 strike vote was fraudulent to the extent of at least 2,200 fraudulent ballots.

The union was then forced to admit specifically in open court that at least 2,200 ballots were fraudulent.

In the Wisconsin Employment Relations Board memorandum, accompanying its interlocutory order (dated March 27, 1941), the board said:

"The election was entirely in charge of a committee of the respondent union under the direction of the officers of such union. *Taking the testimony of the committee members and the officers, it is apparent that they, and they alone, are responsible for the ballot stuffing and the fraudulent conduct of this election.*" [Italics added.]

In the union's appeal from the finding of the Wisconsin Employment Relations Board, the court rendered a decision under date of April 3, 1941, which read, in part, as follows:

"With this concession of fraudulent stuffing of the ballot box the union nevertheless takes the position that the board is wholly without power to order a new strike vote under conditions which will guard against further fraud.

"In other words, it is quite accurate to say that while admitting the acts which produced a fraudulent affirmative strike vote the reply is: 'You can't do anything about it because the law does not expressly say so.'

"The law is not so feeble a creature as the learned counsel for the union would imply. 'It is the crowning merit of our system that, so far as power is concerned, it is as limitless as the capacity of a man to wrong a fellow man' (*Laura v. Kipp*, 155 Wis. 347, 367).

"The union's officers and election committee were by the board's unchallenged finding declared guilty of fraudulently marking at least 2,200 ballots and thereby producing an ostensible majority in favor of a strike. *One of these very officers, thus found guilty of a gross fraud, has verified the complaint in this action, in which the union asks that this court prevent the board from taking steps to wipe out the effects of the fraud which he and his coofficers have committed. That is, it is said in effect that the wrongdoers must be permitted to hold the fruits of their wrong, and the hands of the tribunals of the State of Wisconsin are helplessly tied.*

"That is a proposition that must necessarily shock the conscience of all right-thinking men. Certainly no court of law or equity can stand idly by in the face of such a contention." [Italics added.]

As further proof of the purpose of the strike to retard our national defense program, it is significant that when our employees were returning to work in large numbers in response to the request of Secretary Knox and OPM Director Knudsen, the leadership of Local 248 stopped all production by picket-line violence.

It is significant that Joseph Schneider was the chairman of the union's election committee at the time of the 1941 strike. The Milwaukee Journal of September 23, 1946, describes Schneider as follows:

"Schneider, a Communist since he was 13 years old, formerly was an employee at Allis-Chalmers and a leader in local 248. He was chairman of the union election committee in 1941, when it was disclosed that the union's ballot box had been stuffed with many spurious ballots in the strike vote."

Now let us consider the so-called strike ballot on April 29, 1946, which formed the basis for calling the present strike.

The balloting was under the supervision of a representative of the International UAW-CIO, named Al Glenn.

Mr. Glenn has the following background.

He is "regarded as pro-Communist," the official organ of the Association of Catholic Trade Unionists reported recently (Wage Earner, May 24, 1946).

Glenn signed the petition to free Earl Browder from the Federal penitentiary, a petition circulated by the Communist Party (Daily Worker, March 11, 1942).

He also signed a Communist statement in defense of the Soviets' execution of two Polish Socialist labor leaders, Alter and Ehrlich (Daily Worker, April 18, 1943).

Glenn has taught in the Abraham Lincoln School in Chicago (fall catalogue, 1943, p. 22). This is the old Communist Workers' School of that city.

Glenn was leader of the 1941 International Harvester strike in Chicago, which resulted in a riot. This, too, was a strike with political implications, being aimed at defeat of American foreign policy and self-arming, as the Daily Worker, the Communist newspaper, made clear at the time.

He is now a director of the new Communist front weekly paper, the Chicago Star. The Star's editor is Carl Hirsch, who prior to his present connection was Chicago correspondent for the Daily Worker.

The 1946 Allis-Chalmers strike ballot was conducted in the State Fair Park under the following conditions:

(1) No identification was required for admittance to the election hall.

(2) No poll list of any kind was used.

(3) No positive identification was required for casting a vote.

(4) Voting was not in private booths but was under the surveillance of a watcher selected by the local 248 officers who actually stood on the table where the voters were marking their ballots, as the photograph discussed clearly showed. This photograph was taken by the Milwaukee Journal and appeared in its issue of April 30, 1946.

(5) Mr. Glenn was responsible for tallying the ballots.

In order to insure that any strike called by local 248 in 1946, would be the desire of a majority of the employees in the bargaining unit, the company offered its so-called three-point program.

This program provided as follows:

(1) The union and the company would send to employees clean-cut statements of their respective positions on the issues.

(2) The strike vote would be held under Government supervision on company premises during working hours, the company paying for the time lost by employees who voted.

(3) The ballot would read "Do you instruct local 248, UAW-CIO, to call an immediate strike?"

Throughout the 10 months of the strike the company has repeated this offer so that its employees in the bargaining unit would have the opportunity of making known their desires to their bargaining agent, that is local 248, from time to time during the strike.

The communistic leadership of local 248 flatly refused the offer each time.

The 1939 strike was not called upon the basis of a bona fide secret ballot vote. And it is my considered judgment that the 1946 strike ballot vote was not properly conducted. Of course, the leadership of local 248 admitted on the record that the 1941 strike vote was fraud.

Thus, the experience of Allis-Chalmers with the communistic leadership of local 248 during the past 9 years demonstrates the need of legislation which will require that strike votes be held under the usual safeguards of public elections.

I would like to suggest that the legislation also include the other part of the company's three-point program.

In other words, it should be required that before a strike vote is taken the union and the company have the opportunity of mailing jointly to the employees a statement of their respective positions upon the issues.

In that way the employees are assured of complete knowledge of the issues and alternatives before casting their ballot.

In addition, I suggest that the wording of the ballot contain positive instructions to the union to call a strike.

Strikes are serious matters; therefore, the ballot should be in such form that the employee will realize that his affirmative vote means his job—a direction to his bargaining agent to call a strike immediately.

And now let us apply the "weed killer" test to the suggested legislative remedy.

The remedy merely accomplishes the result of giving the employees assurance of an honest secret ballot vote. They, after all, are the real parties in interest to the collective bargaining, and they are the recipients of all the hardships of a strike.

No honest union leadership could object to such a strike-vote procedure. As a matter of fact, many unions use an impartial outside agency for conducting their strike ballot. Recently in Milwaukee, Wis., a union held a strike vote under the auspices of the Wisconsin Employment Relations Board.

Therefore, it appears clear that positive legislation is badly needed and would in no way be harmful to sound unionism.

Section 3. Governmental guaranty of democratic administration of unions

Over the years, the communistic leaders of local 248 have throttled the following basic democratic rights of its members:

1. Freedom of speech in the shop and in union meetings.
2. Freedom of minority groups to meet together for discussion.
3. Access to union press, to public press, and to mails.
4. Freedom to issue handbills.
5. Freedom to nominate and vote for opposition candidates for office.
6. Inviolability of the union ballot.

The manner in which the leadership has accomplished this destructive process is shown in the carefully documented memorandum attached as exhibit No. 6.

A short time ago a group of about 4,000 employees revolted from the communistic tactics of the leadership and petitioned the International UAW to appoint an administrator to restore democratic administration of the affairs of local 248.

The failure of the international union to heed this request forced this group, as a last resort, to petition to the Wisconsin Employment Relations Board for an election to determine the bargaining agency.

This situation is intolerable.

For that reason, I recommend legislation to establish a procedure whereby the disenfranchised group within the union might appeal to a governmental agency for intervention to restore the democratic procedures in the union or in the alternative, that such disenfranchised group might have the right to an immediate election held by the National Labor Relations Board for selection of a bargaining representative for the unit.

Section No. 4. Compulsory unionism

A dangerous tool of communistic union leadership.—The term "compulsory unionism" means any contract requirement which makes an employee's job dependent upon his membership in good standing in the union.

More specifically, it means that the employer must discharge an employee when so requested by the employee's bargaining agent.

In the hands of a communistic union leadership, the device of compulsory unionism is an even more deadly menace to any democratic society than the tools of false propaganda and fraudulent strike votes.

It means that communism can control the union activities and the very lives of employees by its threat to their means of livelihood.

It means the most drastic kind of dictatorial control.

It can readily be accomplished by fake records, parliamentary maneuvers, gag rules, kangaroo courts, and all of the false propaganda tricks which the leadership of local 248 have used with deadly effect in their administration of the affairs of local 248 during the past 9 years, as explained in exhibit No. 6.

Compulsory unionism an unsound adjunct of trade-unionism.—A basic question is: "Should a man's job be dependent upon membership in a union, the leadership of which is not communistic?"

No one can guarantee that a communistic leadership will not take over the control of any union sometime in the future. If compulsory unionism is in effect, compulsory unionism is ready made for any communistic take over.

Therefore, the menace of compulsory unionism as a tool of communistic union leadership is just as real, though not as immediate, as if the leadership of the union were actually communistic.

But in spite of the potential menace, since labor leaders argue in the affirmative, some on the ground of the need for "union security," and others for two specific reasons, namely, financial security and the power of the union leadership to discipline members.

Let us consider the three reasons separately upon their merits without reference to the threat of communistic control of the union leadership.

Union security.—"Union security" is an appealing term which implies the necessity for providing protection to the union against some force which threatens its status as a bargaining agent.

But what are the forces which might threaten the security of a union? They must be either (1) the employer, (2) another union, or (3) the employees eligible to membership exercising their right to self-organization.

As to protection against employers: The National Labor Relations Act, of course, protects the right of self-organization (i. e., unionism) against interference by the employer.

So also do most State labor laws.

I have not heard anyone question the adequacy of the provisions of the National Labor Relations Act from the standpoint of affording protection to employees and their unions against interference by the employer.

Hence, it may be assumed that unions have at present State and Federal labor laws affording adequate protection against the employer. However, if the protection is not adequate, these laws may be strengthened in order to insure adequate protection.

As to protection against "raiding" unions: This protection, of course, is contrary to the fundamental principle of the National Labor Relations Act, namely, the right to self-organization. To be a "right" at all, this must be a continuing "right" and not cut off when it has been once exercised. Therefore, it must permit employees to select a different bargaining agency should they see fit.

Regardless of the fact, it is a simple matter for the union to bargain for an "antiraiding" clause such as Allis-Chalmers has had in its contract with local 248 for a number of years.

This clause restricts union activities on company premises to members of local 248 alone.

So it must be concluded that if interference of this kind with the right of self-organization of employees is lawful, then it can be obtained by proper contract clause or changed in the National Labor Relations Act.

As to protection against employees: Accordingly, in the last analysis, if protection (security) against any of the three possible "forces" is necessary, it can only be against acts of employees.

Since employees technically are the real parties in interest to every labor contract, the union being merely the agent of the principals, the odd situation exists of protecting the agent (the union against the voluntary action of their principal (the employees) by forcing the principal to be a member of his agent organization.

There is another anomaly. In ours, the greatest of democracies, the National Labor Relations Act (called by labor leaders the Magna Carta of labor) is set up to protect the right of self-organization in collective bargaining.

This means, of course, the voluntary right of employees to choose their union.

Yet compulsory unionism ultimately destroys this guaranteed right to self-organization.

Therefore, the foregoing analysis shows that the term "union security" is misleading and actually means the advocacy of a system of union dictatorship. Whether the dictatorship produces good or bad social and economic results is beside the point. It should have no place in a democracy.

Financial security.—Now let us analyze the argument in support of compulsory unionism as a means of providing "financial security" for the union.

Unions are private associations organized for reasons of self-interest.

They are voluntary organizations formed in order to exercise the right of self-organization guaranteed under the National Labor Relations Act.

Under the act, unions are the agents of all the employees as a group who comprise the collective bargaining unit.

There is no legislative requirement that employees be represented by any labor organization.

Thus, the selection of a union as a bargaining agent is purely a voluntary affair.

However, unions are not in any sense public institutions.

For these reasons unions must rely for financial support of those employees within the bargaining unit who elect to become members of the union.

Normally employees are willing to give financial support to their bargaining agent through the payment of initiation fees and dues and the like, provided the union is democratically administered for their benefit.

If they are not interested in thus supporting their bargaining agent, then either (1) it is a fair inference that there is no need for a bargaining agent, or (2) the administration of the affairs of the union is so bad as to warrant no support.

Hence, it is clear that the financial status of the union, as in any other private organizations, should depend upon the desires of those responsible for its creation and who benefit by its existence.

The withholding of financial support of employees in a bargaining unit is one of the best methods of employee control of the administration of the union.

However, the argument is commonly made that there should be no "hitchhiker" in the labor movement; in other words, that every employee in a bargaining unit should contribute to the support of his bargaining agent.

But it must be borne in mind that the right to be a "hitchhiker" (except in the area of governmental taxation) is a democratic right just as surely as the right of free speech or freedom of worship.

The Government is the only institution in a democracy which has the right to tax its citizens.

Since a union acting as a collective bargaining agent is not a governmental taxing agency, it has no right to tax employees for its support.

Although such action is unthinkable, let us assume, for the purpose of this discussion, that Congress clothe the unions with the power to tax employees in the bargaining unit to support the unions.

If such action were taken it would necessarily be accompanied by governmental control of the use of the funds so raised by the union.

This would include such matters as (1) determination of the size of the union's budget, and (2) limitation to legitimate union purposes, which would not include political purposes.

This would mean that the expense account of every union representative would be subject to check by a governmental agent to determine that the funds of the union were properly used. It would appear extremely doubtful that union leaders would care to have this part of governmental interference in their private affairs.

Therefore, it appears clear that unions do not have the right to tax their principals for their support. Were they given the power by the Government, few would wish financial security at the price of governmental control of union affairs.

Discipline of union members by the union leadership

"Discipline" is a word which implies the authority to command subservience to the will of another.

Applied to the right of a union to discipline its members, it means the subservience of union members to the will of the union leadership.

This would seem to be a distinct perversion of the relationship between the union and the employees in the bargaining unit, as established by the National Labor Relations Act, because the union would be the master instead of merely the agent of the employees.

In situations involving small unions where there is town hall participation by members, democratic administration of the union is assured and dictatorial control by union leadership is remote.

But in situations involving large industrial bargaining units running into many thousands of employees, the case is quite different. All too often democratic election of the leadership and democratic administration of the union in accordance with the will of a majority of the employees is impossible. In those cases the power of the union leadership is absolute to "discipline"; that is, to nullify the democratic rights of employees who disagree with them.

Frequently the right of the union to discipline its members is supported on the ground that such right is needed to outlaw strikes.

This is not a sound argument. The employer and not the union has responsibility and ample corresponding authority to discipline employees for outlaw strikes, especially if they are in violation of "no strike" clauses in a collective bargaining agreement.

My experience indicates that the vast majority of so-called "wildcat" strikes are not spontaneous but are stimulated by the union leadership.

This was clearly demonstrated in 1945 at our La Porte plant, where a series of interruptions of production were stopped by discipline of the union leadership.

The foregoing analysis discloses that Congress is confronted with two vitally important questions in connection with the legislative proposal to outlaw compulsory unionism.

The first question is whether the menace of communistic leadership in the labor movement requires elimination of compulsory unionism as a part of collective bargaining agreements.

Recent press statements of Mr. Tom Clark, Attorney General of the United States, point out in no uncertain terms the danger of communism.

Prominent labor leaders have also raised their voices against communistic leaders of unions.

James Carey, secretary-treasurer of the CIO :

"Their basic desire is to operate your international union solely as a political club in the interest of the foreign policies of Soviet Russia."—Wage Earner, September 27, 1946.

David J. McDonald, secretary-treasurer, United Steelworkers :

"Our organization cannot be a sounding board for alien philosophies."—New Leader, August 17, 1946.

Walter Reuther, president of UAW:

The Communists are "the colonial agents of a foreign government."—Fortune Magazine article, reprinted in the Milwaukee Journal, December 4, 1945.

George Bucher, United Furniture Workers:

"Communist forces operate under policies that are utterly inconsistent with the democratic principles of a free labor movement."—New York Times, August 18, 1946.

These statements are definite indications that the menace is present.

If Congress should decide that there is no danger to the country by permitting the destructive weapon of compulsory unionism to be available to communistic union leaderships, then Congress is confronted with another question.

Recent polls show an overwhelming public opinion against compulsory unionism.

It is generally admitted that compulsory unionism creates the opportunity for great abuses which destroy democratic rights of employees both in relation to their employment and to their political and social activities; and which undermine efficient operation of the employer's business.

The unions' demand for compulsory unionism is frequently the sole cause of many strikes.

For these reasons the time has arrived, particularly in the light of communistic activities in this country, for Congress to decide either (1) to outlaw any form of compulsory unionism as an element of collective bargaining relationship between employer and employee or (2) to incorporate compulsory unionism, in some form, as a part of every collective bargaining agreement with adequate governmental safeguards to prevent all possible abuses.

Hearings upon a bill incorporating the second alternative would, I am confident, produce a complete airing of the entire matter and thus place Congress in an excellent position to pass upon these two alternative questions with sound objectivity and understanding.

Section 5. The right to work

By the use of the foulest terms of vilification, the communistic leadership of local 248 has tried, over the years, to build a psychology of reluctance and fear so that our employees would not exercise their right to work during strikes even though they were not in favor of the strike.

By carefully planned, vicious, picket-line violence in each of the strikes of 1939, 1941, and 1946, the communistic goons of local 248 have threatened, manhandled, and even beaten employees, some aged, some women, who were attempting to exercise their right to work.

During this current strike an aroused public opinion is giving definite and vociferous support to the principle of the right to work as a right equal in dignity to the right to strike.

Fines and jail sentences have been meted out to the lawless goons who have violated criminal statutes of the State.

Citations for contempt of a court judgment prohibiting illegal picketing are now being heard.

As a result of the support of public opinion, the right to work is now being exercised by over 4,500. The rate of return to work and the effect of picket-line violence and intimidation on the exercise of the right to work is shown by the chart, attached as exhibit No. 5.

It is to be noted that on October 28, when the picket-line violence was extremely bad and police protection woefully inadequate, employment dropped from over 2,800 to less than 1,500.

When public opinion insistently demanded protection of the right to work by adequate law enforcement, employment quickly resumed its upward trend.

On December 4 the union again attempted extreme violence on the picket line; the worst violence occurred on December 9.

In spite of this, employees refused to be intimidated and insisted, with utter disregard of violence, upon exercising their right to work.

The Wisconsin Employment Relations Act contains the following unfair-labor practice:

"111.06 (2) (f).—To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or em-

ployment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

Cease and desist orders of the Wisconsin board against violations of the section, enforced by the courts, were helpful in informing the public and encouraging those who resented interference with their rights.

In order that the National Labor Relations Act might properly reflect public opinion, I recommend inclusion in the act of a provision in substance the same as that quoted above.

Section 6. Industry-wide bargaining

The corollary of industry-wide bargaining is industry-wide strikes.

Industry-wide bargaining would be a "natural" for those international unions which are controlled at the top by the Communist Party, because vital American industries from coast to coast could be tied up at the will of the Communist Party.

The present pathetic condition of France illustrates the evils of industry-wide control of unions by Communists.

The French Government now finds itself unable to take any step which Communists might construe as unfriendly, for fear of a general strike by pivotal French unions controlled on an industry-wide basis by Communist labor leaders.

The Government long ago broke up industry-wide cartels and monopolies.

If industry-wide collective bargaining is permitted, labor leaders would be set up as monopolists who could, at will, deny for an indefinite period the services of a basic industry to the American people.

Justice Brandeis pointed out the evils of bigness in business. His thought would also apply to bigness in unions.

Industry-wide bargaining would bring to an abrupt end the town-hall idea in the conduct of unions. The individual would no longer count. He would decide nothing regarding his job. It would be decided hundreds of miles away by men who had no direct knowledge of his job or working conditions.

In other words, democratic trade-unionism, which gives first place to the rights and the voice of the individual, would be replaced by a huge oligarchy, in which the individual would be submerged. He would be like a soldier who has lost his individuality in a great army.

There is another possible bad result from industry-wide bargaining and industry-wide strikes. It would be the harsh reaction of government to Nation-wide strikes in essential public services.

This reaction might well take the form of controls which would jeopardize the freedom of both employer and employee alike, and thus cause a trend toward government's dictatorship over the Nation's economic life.

The foregoing comments are based upon rationalization rather than personal experience.

However, experience gained in the present Allis-Chalmers strike seems to lend support to the above conclusions.

There are separate bargaining units at each of the company's eight plants.

All plants but one (a small plant on the west coast) went out on strike in 1946.

At the present time all strikes have been settled at the various plants except the strike at the West Allis Works, which was called by the communistic leadership of local 248.

If all plants had been under one leadership (i. e., the communistic leadership of local 248), it is certain that no strike at any plant would have been settled.

The Government long ago ordered the breakup of large combinations of trusts. Likewise the Government could order the breakup of the industry-wide bargaining units.

PART II. DISCUSSION OF VARIOUS LEGISLATIVE PROPOSALS IN THE AREA OF LABOR RELATIONS

Section 7. Wisconsin Employment Relations Act

The National Labor Relations Act was ostensibly designed as the Magna Carta of labor, that is, an act to protect the right of employees to self-organization for the purpose of collective bargaining.

The act aims to protect the right of employees to organize by making rules of conduct for the employer through injunction against infractions thereof.

There was nothing wrong with the basic concept of the act so far as it goes. Its weakness lay in what appears to be the partisan administration by the National Labor Relations Board and its regional status.

This partisanship was made possible by the administrative procedures set up in the act.

For example, the procedure for handling the unfair labor practices is as follows:

- (1) The union files a charge of unfair labor practice;
- (2) The Board investigates it by asking the accused employer to supply all possible information;
- (3) The Board then, in its discretion, files a complaint formally charging the employer with the commission of the alleged unfair labor practice; and
- (4) A hearing is then held by a trial examiner of the Board upon the complaint.

With the Board attorney conducting the hearing, and another Board attorney acting in the capacity of prosecuting attorney, the hearing is more of an inquisition than a judicial proceeding.

Thus it appears that the National Labor Relations Act as administered applies (1) a code of conduct for employers (but not for employees, the union, or any third party), and (2) an inquisitorial rather than a judicial system for determining violations of the rules of conduct by the employer.

Experience, since the passage of the act, discloses that union members and union leaderships commit serious breaches of conduct in the area of labor relations.

To correct these bad practices and to provide a better balanced system, I would like to recommend for consideration of your committee the modification of the National Labor Relations Act along the lines of the Wisconsin Employment Relations Act, attached as exhibit No. 7.

The Wisconsin act is created upon the thesis that there are three interested parties in the field of labor relations, namely, the public, the employer, and the employees and their bargaining agent.

The Wisconsin act sets up a list of unfair labor practices by the employer, which are more comprehensive than those set up in the National Labor Relations Act.

The Wisconsin act also sets up a list of unfair labor practices for employees and their bargaining agent which generally parallels the list of unfair labor practices for the employer.

There is also set up a third category of unfair labor practices for other interested parties (not the employer, employee, union, or bargaining agent).

Thus, the Wisconsin act sets up a complete code of conduct for all those who are in a position to interfere with the stated purpose of the act, namely, the right of employees to self-organization for the purpose of collective bargaining.

Another glaring difference between the Wisconsin act and the National Labor Relations Act is the procedure for passing upon a complaint charging commission of unfair labor practices.

The Wisconsin act establishes the following procedures:

- (1) A written complaint is filed with the board charging the commission of an unfair labor practice.
 - (2) The person against whom the complaint is made files a written answer to the complaint.
 - (3) The board then fixes the time for hearing on the matter.
 - (4) At the hearing, the board presides in a judicial capacity, receives evidence from the complaining party acting through its own attorney or agent in support of the claim, and similarly the rebutting evidence of the defending party.
- On the basis of the evidence submitted in the hearing, the board makes its decision.

(5) If the board finds that an unfair labor practice has been committed, it orders the offending party to cease and desist.

(6) An appeal may be made to the circuit court (the court of general jurisdiction) upon the findings of the board.

Thus, the Wisconsin act established a well-balanced code of conduct for employers, employees, bargaining agents, and other third parties and applied such code through a strictly judicial procedure.

It would be a simple matter to change over the procedures of the National Labor Relations Act to those of the Wisconsin Employment Relations Act.

The regional board could function as trial agencies with practically no change in personnel.

If the Wisconsin procedure were used, hearings could be expedited and the effectiveness of the act greatly increased.

All of the recommendations contained in sections 1 to 6, inclusive, of this brief could be established as unfair labor practices and effectively administered in accordance with the procedures of the Wisconsin act.

If these recommendations were followed, most of the weaknesses of the National Labor Relations Act would be eliminated without in any way reducing the effectiveness of the protection afforded to the right of self-organization.

Section 8. Definition of "collective bargaining"

The proposed legislation.—Section 5 (b) (2) of Senator Ball's bill (S. 360) provides that it shall be an unfair labor practice for a labor organization or its agents to refuse to bargain collectively with an employer.

Section 5 (c) of the same bill defines "collective bargaining" as:

"* * * the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times to confer with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or the settlement of any question arising thereunder, but such obligation does not compel either party to agree to a proposal or require the making of a counter proposal."

Comment: Section 5 (c) has two elements which will be here commented on separately.

Element A. The obligation to meet and confer: During the present strike negotiations the leadership of local 248 has taken vacations from bargaining. In one instance, for more than a month they refused to meet with the company for the purpose of bargaining.

During this vacation, the company repeatedly urged the union to carry on negotiations, even by correspondence, but the union adamantly refused.

The union's vacation from bargaining caused the employees a pay-roll loss of more than \$2,500,000 and the company a production loss in sales of more than \$10,000,000.

Because of the unnecessary losses to the employees, community, and the company, resulting from the union's delay in negotiating the strike settlement, the company filed a petition with the National Labor Relations Board, copy of which is attached marked "Exhibit No. 8," urging the Board to require the union to meet with the company for the purposes of collective bargaining or lose its right of representation.

The Board refused to receive the petition stating that it had no jurisdiction on the matter.

This experience with the leadership of local 248 indicates the necessity of passage of both section 5 (b) (2) and element A of section 5 (c) of bill S. 360.

Element B. The freedom to reject a proposal: The clarification of the act by the language "such obligation does not compel either party to agree to a proposal or require the making of a counter proposal" is a sound preventative of the possibility of maladministration.

In the absence of such clarifying amendment, the Board will continue to invade the area of actual collective bargaining by using the Board's appraisal of the bargaining value of the proposal of the employer as a basis for making a decision on a charge of failure to bargain in good faith.

For that reason, I favor the enactment of element B of section 5 (c).

Section 9. Supervisory employees

The proposed legislation.—Section 202 of the proposed Federal Law Relations Act of 1947 and sections 2 (a), (c), (1), and (c) (2) of Senators Ball's bill, S. 360, exclude "supervisory employees" from the operation of the National Labor Relations Act.

Comment: I favor the adoption of this legislation.

It is axiomatic that no man can serve two masters.

The direction of the working force, the inspection and acceptance of the work produced, and the discretionary application of the formulas for determining the pay to be received are exclusively management functions and the

personnel responsible for their discharge must be responsible directly and solely to the employer.

Unless this is effectuated, control of the employer's enterprise can be usurped by the leadership of the union which is the bargaining agent for such management representatives.

Section 10. The conciliation service

The proposed legislation.—Section 1 of the National Labor Relations Act of 1947 transfers the United States Conciliation Service to the Federal Mediation Board.

Comment: I favor an arrangement whereby the United States Conciliation Service can function impartially as an agency independent of both employers and unions and not under the Department of Labor which was expressly established to advance the cause of unions.

Allis-Chalmers has had innumerable contracts with commissioners of the United States Conciliation Service and by and large has respect for their personal integrity and an occupational competence.

The Government, however, does not derive the full benefit of their ability in the conciliation of labor disputes, because employers generally are aware that the commissioners of conciliation do not receive their orders from an impartial Government agency, but rather from the Department of Labor which has the responsibility of functioning for the benefit of unions.

For example, during the recent strike at our company's Boston works, while the unions were exerting every effort to persuade the Government to seize the company's plant, a commissioner of conciliation admitted on the record receiving instructions to withdraw from the negotiations then in progress.

Circumstances indicated that similar instructions were issued at the same time to the commissioners of conciliation assigned to other struck plants of the company.

Such instructions were in direct conflict with the fundamental principle of conciliation, namely, to "keep 'em meeting." Hence, it must be assumed they were given for the purpose of creating an apparent stalemate to support the unions' campaign for Government seizure of Allis-Chalmers plants.

I am confident that the commissioners of conciliation would welcome a new status as a part of an independent governmental agency.

CONCLUSION

Long before the National Labor Relations Act was written Allis-Chalmers voluntarily recognized and accepted collective bargaining.

The company's record and attitude toward the bargaining representative of its production employees has been characterized by wholehearted recognition and acceptance of its proper functions.

This is proved conclusively by the attached exhibit No. 9 which contains an excerpt from the company's statement to a panel of the National War Labor Board in the company's 1942 appearance before that body.

Local 248 never has refuted this statement, and in that case (NWLB No. 211) the National War Labor Board's panel stated:

"Every other claim of the unions (local 248) purporting to prove that the management pursue an antiunion policy has been tracked down with the same result (complete failure of proof on the part of the union). The panel members are not unfamiliar with antiunion practices, and they believe they could detect them if they existed, especially after 20 days of hearings and many more days of investigation." (Parenthetical statements added.)

On the other hand, the leadership of local 248, following a typical Communist technique, has deliberately exerted every effort to thwart an understanding between management and employees.

The company's history discloses a long record (from 1916 to 1937) of pleasant, peaceful strike-free relations between Allis-Chalmers and its employees.

It shows a strike-free record from 1937 to date of pleasant relationships with certain A. F. of L., CIO, and independent unions.

On the other hand, it shows a period of strikes, false propaganda, and unrest from 1937 to date in the relationship with the communistic leadership of local 248 UAW-CIO.

My recommendations for remedial legislation will help, I believe, to control the power now vested in many Communist-dominated unions and will have the effect of curtailing strikes.

If, as a result of your committee's recommendation, favorable congressional action is taken to effectuate such recommendations, then a great step forward will have been taken to eradicate the weed of communistic control of unions without harming the growth of sound trade-unionism.

EXHIBIT NO. 1. THE COMMUNIST CONNECTIONS OF LOCAL 248 LEADERS

THE COMMUNISTIC CONNECTIONS OF LOCAL 248 LEADERS

Introduction

Every officer of local 248 is a member of the Communist Party or a consistent party liner. So also are a large percentage of the stewards and shop committeemen.

This is not a recent phenomenon, but has been characteristic of the local 248 leadership since the union was formed in 1936.

Below is the record of the present officers and members of the bargaining committee.

Robert Buse, president.—Robert Buse "is a Communist." So the Milwaukee Journal has flatly asserted three different times.¹ The publication of the Association of Catholic Trade Unionists states that Mr. Buse "is also a member of the national auto commission of the Communist Party."²

Mr. Buse signed the nomination papers of the candidate for Governor of Wisconsin who ran on the Communist Party ticket. Mr. Buse knows the man personally, for the candidate was for some time a member of local 248, and with Mr. Buse was a member of local 248's "flying squadron."³ Accordingly, there can be no question that Mr. Buse knew what he was signing when he affixed his name to the nomination papers.

Mr. Buse circulated nomination papers of Edmund Bobrowicz, of Milwaukee, who ran for Congress as a Democrat.⁴ Mr. Bobrowicz was thoroughly exposed as a Communist, and repudiated as such by the Democratic Party in Wisconsin. Even after these disclosures Mr. Buse continued to actively support Mr. Bobrowicz's candidacy.⁵

Mr. Buse was a member of the Citizens' Committee to Free Earl Browder.⁶ And he recently accepted an appointment as honorary adviser of the American Youth for Democracy, the new name of the Young Communist League.⁷

He attended the founding conference in Detroit of the new Communist front organization, the National Congress on Civil Rights.⁸

The Milwaukee Journal has exposed Mr. Buse's subservience to the will and direction of Fred Blair, the head of the Communist Party in the Wisconsin district. "On occasion, Blair has summoned Robert Buse, a Communist, president of the Allis-Chalmers union, to secret meetings."⁹

Mr. Buse recently attended a Communist Party meeting in Milwaukee at which Eugene Dennis was the speaker. And the Local 248 Pickets Club made a donation to the party at the meeting, it was announced.¹⁰

When the original president of the local, Harold Christoffel, was drafted into the Army, Mr. Buse, then vice president, became president of local 248. He also took over Mr. Christoffel's job as president of the completely Communist-dominated Milwaukee County CIO Council. A year later Mr. Buse was moved up to the presidency of the State CIO.¹¹

But anti-Communist sentiment in other Milwaukee CIO unions finally broke Communist control of both the county and State CIO councils, and Mr. Buse was unseated as president of the State CIO.

¹ Milwaukee Journal, September 24, 1946; October 6, 1946; November 5, 1946.

² Wage Earner, January 3, 1947. See also December 6, 1946.

³ Wisconsin CIO News, October 1, 1938.

⁴ Milwaukee Journal, September 14, 1946.

⁵ Wisconsin CIO News, November 1, 1946.

⁶ The Worker, January 25, 1942.

⁷ Milwaukee Journal, September 5, 1946.

⁸ Wisconsin CIO News, April 19, 1946.

⁹ Milwaukee Journal, October 6, 1946.

¹⁰ Ibid., February 3, 1947.

¹¹ Wisconsin CIO News, November 30, 1945.

Harold Christoffel, honorary president.—Harold Christoffel's Communist record is so well known and so extensive that it need only be touched upon here. He returned from Army service after the present strike began, and since that time has stayed very much in the background, preferring, apparently, to let Mr. Buse carry the brunt of the strike.

A dozen publications have reviewed Mr. Christoffel's long-time Communist affiliation. In 1938 the Socialist Party expelled him for being a secret Communist and attempting to do an internal wrecking job on the Socialist Party in Milwaukee.

Among the organizations and individuals who have identified Mr. Christoffel as a Communist are—

Socialist Party of Wisconsin.

Socialist Party paper, *The Call*.

Social-Democratic paper, *The New Leader*.

The Milwaukee Journal.

The Milwaukee Sentinel.

The West Allis Star.

The Capital Times, Madison, Wis.

Time Magazine.

Newsweek magazine.

The Catholic Herald Citizen, Milwaukee, Wis.

The Michigan Labor Leader.

The Wage Earner, paper of Association of Catholic Trade Unionists.

Milwaukee Federated Trades Council, AFL.

F. J. Michel, past UAW-CIO director of this region.

George Nordstrom, past UAW-CIO director of this region.

Sidney Hillman.

Walter Reuther.

Richard Frankenstein.

William S. Knudsen, Office of Production Management.

J. B. Matthews, director of research, House Un-American Activities Committee.

Senator Bernhard Gettelman, member Un-American Activities Committee created by joint action of Wisconsin Senate and Assembly.

Farrell Schnering, former paid official of Wisconsin Communist Party.

Kenneth Goff, former paid official of Wisconsin Communist Party.

Representative Coffee of Washington.

Representative McCormack of Massachusetts.

Eugene Lyons, noted writer, author of *The Red Decade*.

Commander B. L. Straub, United States Navy.

The *Milwaukee Journal* has recently repeated its charge that Mr. Christoffel is a Communist.¹² And it reported that Mr. Christoffel very frequently visited, under cover of darkness, the home of a Milwaukee Communist, in whose home Ned Sparks, secretary of the Communist Party of Wisconsin also lived, under the alias of Taylor.

"During the long strike at Allis-Chalmers in 1941, when the Nation was engaged in arming for national defense, many strike leadership meetings were held at the Eighty-eighth Street place."¹³

Joseph Dombek, vice president.—Joseph Dombek is a newer officer of the local. He signed the 1946 nomination papers of the candidate for Governor of Wisconsin on the Communist Party ticket.

On two occasions the *Milwaukee Journal* has openly charged that "Dombek is a communist,"¹⁴ after conducting a lengthy and careful investigation.

Fred McStroul, recording secretary.—Fred McStroul has been recording secretary of local 248 since its inception 10 years ago. A former paid official of the Communist Party, Farrell Schnering, who belonged to the party from the spring of 1931 to the end of 1935, testified under oath that McStroul joined the Communist Party about the same time that Harold Christoffel did.¹⁵ This was about 1935.

¹² *Milwaukee Journal*, September 24, 1946; November 5, 1946.

¹³ *Milwaukee Journal*, September 23, 1946.

¹⁴ *Milwaukee Journal*, September 24, 1946; November 5, 1946.

¹⁵ Transcript of un-American activities investigation committee set up by Wisconsin Legislature, May 21, 1941, p. 18; *Milwaukee Journal*, September 1, 1940.

Another paid official of the Communist Party organization in Wisconsin, Kenneth Goff, was a party member from May 1936 to October 1939.¹⁶ He operated under the party name of John Keats.¹⁷ He testified under oath that he personally knew Mr. McStroul to be a member of the Communist Party.¹⁸ He declared Mr. McStroul was a member of the general union branch of the party.¹⁹

Mr. Goff states: "The moneys [of local 248], that were brought directly to the party office were brought in by Harold Christoffel, Fred McStroul, and a man whose name I never knew, and were turned over to John Sekat, who was party treasurer at that time."²⁰

The Michigan Labor Leader described Mr. McStroul as "a hewer to the party line."²¹

Mr. McStroul participated in the public riot which occurred between Communist Party members and sympathizers and the German Bund organization of Milwaukee at the City Auditorium on October 30, 1938.²² At present he is under indictment for riotous acts in connection with the current strike.

He has also been guilty of violence within the Allis-Chalmers plant, having been one of four men to eject physically from the plant an employee of AFL membership.²³

Mr. McStroul does not take part in front activities. He is usually careful not to sign any documents or petitions to which the party label is attached. However, he notarized several 1946 Communist Party nomination papers a few months ago.

Linus Lindberg, treasurer.—Linus Lindberg has been treasurer of local 248 since the former treasurer, Edwin Lundquist, suddenly and strangely left town in the spring of 1940.

Mr. Lindberg signed the 1938 Communist Party nomination papers of Fred Blair, chairman of the Wisconsin Communist Party, when Blair ran for United States Senator on the party ticket.

Mr. Lindberg was a member of the Citizens' Committee to Free Earl Browder.²⁴

He sent a letter of congratulation to the Communists' national newspaper, The Daily Worker, when the party celebrated the twentieth anniversary of the paper's publication.²⁵

He signed the 1946 Wisconsin Communist Party nomination papers. Like Mr. Buse, he circulated nomination papers for Edmund Bobrowicz for Congress,²⁶ and after Mr. Bobrowicz's exposure as a Communist, Mr. Lindberg continued to support him.²⁷

In all his speeches and articles, Mr. Lindberg betrays an identity of view with the current party line. After Earl Browder was expelled from the party, and the party reverted to an anticapitalist position, Mr. Lindberg wrote: "The free enterprise system by itself either is not able or will not plan in terms that guarantee full-scale operation in our economy."²⁸

He opposes military conscription and thinks that the United States should share the atom bomb with Russia, both of which views are identical with those of the Communist Party.²⁹

Recently Mr. Lindberg attended the first meeting of the Win the Peace Committee in Washington, D. C.³⁰ Both the Socialist and the Social-Democratic groups in the United States have exposed this committee as a Communist front.

Mr. Lindberg was secretary-treasurer of the Communist-controlled Milwaukee County CIO Council. When the anti-Communist forces captured the council last fall, Mr. Lindberg was defeated for reelection.

John Kaslow, sergeant at arms.—John Kaslow is a consistent party liner, but leaves to other officers of the local the spotlight in promoting Communist objec-

¹⁶ Transcript of investigating committee, April 2, 1941, p. 1.

¹⁷ Ibid., p. 5.

¹⁸ Ibid., p. 2.

¹⁹ Letter of Goff dated March 13, 1944.

²⁰ Ibid.

²¹ Michigan Labor Leader, issue of April 11, 1941, 5-1.

²² Milwaukee Journal, October 31, 1938.

²³ Milwaukee Journal, April 13, 1940.

²⁴ The Worker, January 25, 1942.

²⁵ Daily Worker, January 13, 1944, 11-3.

²⁶ Milwaukee Journal, September 14, 1946.

²⁷ Wisconsin CIO News, November 1, 1946.

²⁸ CIO News, local 248 edition, September 7, 1945, 8-4.

²⁹ CIO News, November 30, 1945, 7-3.

³⁰ CIO News, April 5, 1946, 3-5.

tives. However, he was a member of the Citizens' Committee to Free Earl Browder.³¹ And he signed the nomination papers of the candidate on the Communist Party ticket for Governor in 1946. He is under indictment for rioting during the current Allis-Chalmers strike.

William Ostovich, chairman of education committee.—William Ostovich is a comparatively new man in local 248 affairs. He signed the 1946 Communist nomination papers. This plus the fact that he was made chairman of the local 248 education committee³² raises strong suspicion that he is a member of the party. This education committee since its inception has been consistently utilized to instill anticapitalist pro-Communist, and pro-Russian ideals in the heads of all union members who attend its meeting.

This education committee originally was composed of Herbert Nagi, Sigmund Eisenschner, Michael Boblin, Ferdinand Stanek, and Harold Christoffel, at least three of whom are Communists.³³ For instance, Mr. Eisenschner today is chairman of the Milwaukee County branch of the Communist Party.³⁴ And Mr. Boblin sits on the platform with other party officials at public meetings conducted by the Communist Party.³⁵

Nick Kalenich, who was appointed to the local 248 education committee in 1940, signed the 1938 Communist Party nomination papers. He did so again in 1940 and in 1946.

Others who have served on this committee are the brothers Larry and Leo Ligocki. The Goff file shows that Larry had extensive Communist connections. Leo signed the 1946 Communist Party nomination papers. Both Larry and Leo were members of the Citizens' Committee to Free Earl Browder.³⁶

Another education committee member is Ed Peters, who was a member of the Citizens Committee to Free Earl Browder,³⁷ and a signer of the 1946 Communist Party nomination papers.

The local 248 educational courses sometimes have concluded with imported graduation speakers. The speakers engaged have been such well-known party liners as Leo Huberman, Richard O. Boyer, and George Seldes, editor of the party line paper, *In Fact*.³⁸

In the past 2 years the local 248 education committee has been cooperating closely with the notorious Abraham Lincoln School of Chicago, the successor to the Communist Workers School of that city.³⁹ A course of lectures arranged by the Abraham Lincoln School was presented to the local 248 education class. The imported lecturers were John Bernard, Ernest DeMaio, Ishmael Flory, Arthur Sterns, Conrad Komorowski, and William L. Patterson, all of them well-known Communists or party liners.⁴⁰

In view of the above, it appears obvious that Mr. Ostovich would hardly be entrusted with the chairmanship of the local 248 education committee were he not a trustworthy party man.

Not long ago Mr. Ostovich sent a letter to the Milwaukee Journal, advocating the nationalization of basic American industries.⁴¹ Agitation for this had been begun by the Communist Party shortly before.

Mr. Ostovich last fall ran on the pro-Communist slate for the executive board of the Milwaukee County CIO Council, but was defeated along with the entire pro-Communist slate.

Leslie Roth, bargaining committee.—Leslie Roth, who is a member of the bargaining committee, is a brother-in-law of Harold Christoffel.

Mr. Roth has a long Communist record. He was fined for taking part in the Communist-Nazi riot at the Milwaukee Auditorium on March 6, 1938.⁴²

Mr. Roth signed the 1938 Communist Party nomination papers for Fred Blair for United States Senator. He also signed the 1940 Communist Party nomination papers.

³¹ *The Worker*, January 25, 1942.

³² *CIO News*, local 248 edition, July 25, 1945, 16-4.

³³ *Allis Chalmers Workers' Union News*, September 30, 1937, 3-1.

³⁴ *Daily Worker*, June 17, 1944; *CIO News*, February 15, 1946, 6-3.

³⁵ For example, the Earl Browder meeting in the Pabst Theater, Milwaukee, May 1943.

³⁶ *The Worker*, January 25, 1942.

³⁷ *Ibid.*

³⁸ *CIO News*, June 23, 1941; December 1, 1941; October 19, 1942; *CIO News*, local 248 page, May 12, 1941, p. 7.

³⁹ *CIO News*, local 248 edition, March 27, 1944, p. 14.

⁴⁰ *CIO News*, April 3, 1944, p. 1; April 10, 1944, p. 7.

⁴¹ *Milwaukee Journal*, June 5, 1946.

⁴² *The Journal*, March 27, 1938; September 1, 1940.

He was elected chairman of the West Allis Peace Council, which rigidly followed the party line during the war period before Germany attacked Russia.⁴³

He and Herbert Nagi attended the Working Conference for Peace at Washington, D. C., which set up the infamous American Peace Mobilization meeting held in New York early in April of 1941.⁴⁴

Mr. Roth signed a petition to free Earl Browder from prison.⁴⁵ He was also a member of the Citizens' Committee To Free Earl Browder.⁴⁶ He was present at a Communist Party meeting held in Milwaukee in May 1943, at which Earl Browder was the main speaker. He also frequents the Communist Book Store in Milwaukee.

It is probably this man of whom the Communist newspaper, *The Worker*, speaks: "Brother Les, of the West Allis Club, approached 22 people in 1 week for Worker subscriptions and renewals * * *. These 22 people were workers in Les' shop and now 20 of them are closer friends and better trade-unionists."⁴⁷

This same Les won a wallet as a prize for securing 54 subscriptions in another Daily Worker subscription drive.⁴⁸

Mr. Roth is in favor of using direct, violent methods. In addition to his fine for participation in the Communist brawl downtown in 1938, he was forced to make a settlement out of court for his part in the Pythian Castle Hall riot of June 8, 1939, during the 1939 Allis-Chalmers strike.⁴⁹ Moreover, he was sentenced to jail for 4 months for violence on the Allis-Chalmers picket line during the 1941 strike.⁵⁰ However, another judge reduced the sentence to a fine of \$50 and costs after the strike's conclusion.⁵¹

John Kennedy, bargaining committee.—John Kennedy's only known public espousal of a Committee cause was his membership on the Citizens' Committee To Free Earl Browder.⁵² He has always supported Communist domination of local 248, and for years has associated intimately with the other officers of the local.

Mr. Kennedy was one of the committee named by local 248 to investigate the infamous strike vote ballot fraud which set off the 1941 Allis-Chalmers strike.⁵³ The stuffing of the ballot box in this strike had apparently been perpetrated by or with the knowledge of the chairman of the strike ballot committee, Joe Schneider, who has one of the longest Communist records in Milwaukee, going back to the time when he was 13 years of age. Mr. Kennedy was one of the men who covered up for Mr. Schneider and any others who were responsible for this grave injustice to the Allis-Chalmers Manufacturing Co. and its employees.

Mr. Kennedy has twice been arrested for riot on the 1946 strike picket lines. The cases are pending.

Herbert Nagi, bargaining committee.—According to the documents filed by ex-Communist Goff with the Wisconsin Legislature's joint investigating committee, Herbert Nagi is at least a party liner. He has been careful never to identify himself openly with the Communist Party, perhaps for the reason that he is the legislative chairman both for local 248 and until recently for the Milwaukee County CIO, and must not become known to the public as a Communist.

However, his speeches and his front activities reveal where his political sympathies lie. He was a member of the Communist-loaded education committee of local 248.⁵⁴ He was a member of the 1939 May Day arrangements committee.⁵⁵ The May Day demonstrations in Milwaukee in those years were always arranged and dominated by Communist personalities, and the Communist Party marched behind red flags in the parades.⁵⁶ Mr. Nagi also gave a speech that

⁴³ West Allis Guide, December 12, 1940, 7-6; CIO News, December 16, 1940, 2-4.

⁴⁴ Milwaukee Journal, January 23, 1941.

⁴⁵ Daily Worker, May 2, 1941, 2.

⁴⁶ The Worker, January 25, 1942.

⁴⁷ Worker, September 1944, 2-2.

⁴⁸ Daily Worker, February 25, 1946.

⁴⁹ Milwaukee Journal, September 18, 1940.

⁵⁰ Milwaukee Sentinel, June 14, 1941.

⁵¹ Milwaukee Journal, November 21, 1941.

⁵² The Worker, January 25, 1942.

⁵³ CIO News, April 7, 1941, 8-4.

⁵⁴ Allis-Chalmers Workers' Union News, September 30, 1937, p. 3.

⁵⁵ CIO News, April 10, 1939, 8-1.

⁵⁶ Milwaukee Journal, May 2, 1937; Sentinel, May 2, 1938; Sentinel, May 1, 1939.

year before the notorious Allis-Chalmers flying squadron on the significance of May Day.⁵⁷

He wrote an article in the Allis-Chalmers Workers' Union News claiming the "collapse" of the present economic system and the need of the workers to study the problem and then solve it.⁵⁸

Mr. Nagi, like the Communists, opposed the lend-lease bill before Russia was attacked by Germany.⁵⁹ He and all the officers of local 248 reversed this attitude immediately after Russia had been attacked, and they called for all-out aid to Britain and Russia even before Pearl Harbor.

Mr. Nagi's front activities include membership in the civil liberties section of the Wisconsin State Conference on Social Legislation, a notorious Communist-front organization.⁶⁰

He attended the American Youth Congress at Lake Geneva in July 1940, as a representative of the West Allis Peace Council, a Communist-dominated group.⁶¹

When the American Peace Mobilization was created (which was the Communist-created organization which for many weeks picketed the White House in opposition to President Roosevelt's foreign policy until the very day Germany attacked Russia), Mr. Nagi served as chairman of the Milwaukee County chapter of this group.⁶² In this work he collaborated with John Teeling, an old party member who has been moved around to a number of cities in the country by the party. A check of the Milwaukee City Directories discloses that Mr. Teeling tried to cover up his tracks by listing himself at different times as John Teeling, as Timothy Gilmartin, and as John Gilmartin.

In April 1941 Mr. Nagi addressed the so-called American People's meeting in New York, which was sponsored by the American Peace Mobilization. This was a 100-percent Communist-front affair.⁶³

More recently Mr. Nagi has been devoting himself to PAC activities. He spoke at a PAC meeting, along with Nathan Garfield and Mrs. Josephine Nordstrand, two of the most active Communists in Milwaukee.⁶⁴

Charles Fisher, bargaining committee.—According to the Goff file, Charles Fisher exhibits all the familiar earmarks of a Communist.

He signed the national petition to free Earl Browder.⁶⁵ He was also on the citizens' committee to free Earl Browder.⁶⁶

He attended the infamous American people's meeting in New York as a delegate early in 1941, which was staged by the American Peace Mobilization.⁶⁷

At all times he has displayed unquestioning obedience to the Communist Party line as it has zigged and zagged.

Mr. Fisher was another of the local 248 leaders assigned to investigate the strike vote ballot fraud of the 1941 strike, but, like the rest, he could not "find" the culprit.⁶⁸

Two years ago Mr. Fisher ran for the Wisconsin State Assembly and was elected.⁶⁹ The Communist Party takes much credit for his election: "Perhaps the main feature of the campaign was the United People's campaign carried on by the win-the-war forces—the Democratic Party, the PAC, and other groups * * * The North Side Communist Club, with Mort Altman as chairman, also worked effectively with these groups and did its share of doorbell ringing along with other election activities."⁷⁰

Mr. Fisher was defeated for reelection to the assembly in 1946.

Arne Hansen, bargaining committee.—Arne Hansen is a newer member of the bargaining committee. He is known for advising fellow employees to read the Daily Worker. He was present at the twenty-fifth anniversary meeting of the

⁵⁷ CIO News, May 8, 1939, p. 8.

⁵⁸ Allis-Chalmers Workers' Union News, August 16, 1937.

⁵⁹ CIO News, February 17, 1941, 7-4.

⁶⁰ Milwaukee Journal, December 15, 1939.

⁶¹ West Allis Guide, July 11, 1940, 11-1.

⁶² CIO News, February 4, 1941, 7-3.

⁶³ CIO News, April 21, 1941, 8-2.

⁶⁴ CIO News, October 11, 1943, 1-4.

⁶⁵ Daily Worker, May 2, 1941, p. 2.

⁶⁶ The Worker, January 25, 1942.

⁶⁷ CIO News, April 21, 1941, 1-4.

⁶⁸ CIO News, April 7, 1941, 8-4.

⁶⁹ CIO News, local 248 edition, November 13, 1944, 1-1.

⁷⁰ Wisconsin Communist Party Digest, November 1944, 4-5.

Communist Party in Milwaukee in 1944. And he signed the 1946 Communist nomination papers.

Daniel Sobel, local 248, party attorney.—All attorneys who have represented local 248 have been Communists and party liners. Discussion herein is limited to the record of the local's present attorney, Daniel Sobel.

Mr. Sobel was the main speaker at an organization meeting of several Communist and "innocent" youth groups, brought together to form a junior auxiliary of the American League Against War and Fascism some years ago.⁷¹ This national organization was completely dominated by the Communist Party.

At this meeting, Ann Stewart was elected chairman of the Junior Auxiliary.⁷² Miss Stewart concealed her real name, Ann Sabljak, when she was engaged in party work.⁷³ At that time she was employed at the main office of the Communist Party in Milwaukee.⁷⁴ Four years later she married Harold Christofel, president of local 248.

Mr. Sobel also served as chairman of a conference at Milwaukee of the American League Against War and Fascism.⁷⁵

He became the secretary of the Citizens' Anti-Nazi League in 1938.⁷⁶ This was a very obvious Communist group which at once went out of business when Stalin and Hitler signed a pact in 1939.

Mr. Sobel was also active in the American League for Peace and Democracy, which was the new name of the American League Against War and Fascism.⁷⁷

He was also active in committee work for the Wisconsin State Conference on Social Legislation.⁷⁸

In 1940, both Mr. Sobel and his wife signed the 1940 Wisconsin Communist Party nomination papers. They both signed the 1946 Communist nomination papers also. And Mr. Sobel frequents the Communist book store in Milwaukee.

When the Milwaukee chapter of the National Federation for Constitutional Liberties, an obvious Communist-front group, was formed, Mr. Sobel was elected treasurer.⁷⁹

CONCLUSION

Of great significance is the fact that not one of the men mentioned above has ever done or said anything of public record which conflicted with party discipline, party policy, or the party line.

The data furnished are therefore not a tendentious selection of conflicting evidence. On the contrary, every scrap of known information has been presented without any sifting of the evidence. And every item points inexorably to one conclusion: That only men of Communist Party membership or sympathies are ever permitted to become officers of local 248.

STRIKE AT WEST ALLIS WORKS OF ALLIS-CHALMERS MANUFACTURING CO.

(Extension of Remarks of Hon. Melvin Price, of Illinois, in the House of Representatives, Thursday, January 23, 1947)

Mr. PRICE of Illinois. Mr. Speaker, there is no subject more widely discussed in the United States today than the question of labor-management relations. Every newspaper and every radio commentator has discussed it, often with more heat than light. And much legislation has been drafted, most of which, incidentally, proposes drastic and unjustified restrictions on the legitimate rights of unions.

In the light of this situation, I should like to call your attention to the fact that perhaps the most important single strike now in effect in this country is the

⁷¹ Milwaukee Sentinel, April 6, 1934.

⁷² Ibid.

⁷³ Transcript of Wisconsin Legislature Un-American Activities Committee, April 9, 1941, pp. 4, 6, 8, 9f, 23, 34f, 43-46; *ibid.*, April 29, 1941, p. 2f; Milwaukee Journal, April 10, 1941; Milwaukee Sentinel, April 11, 1941.

⁷⁴ Farrell Schnering affidavit of May 22, 1941, p. 1.

⁷⁵ Milwaukee Sentinel, May 21, 1934.

⁷⁶ Milwaukee Sentinel, May 27, 1938.

⁷⁷ Milwaukee Sentinel, September 9, 1938.

⁷⁸ Milwaukee Sentinel, December 15, 1939.

⁷⁹ CIO News, December 2, 1940, 11.

direct responsibility, not of the union involved, but of the company. I refer to the strike now in progress at the West Allis Works of the Allis-Chalmers Manufacturing Co., in West Allis, Wis.

The Allis-Chalmers Manufacturing Co., Mr. Speaker, has a long and sordid record of antilabor activities. For years it has been a leading member of the National Metal Trades Association. The pages of the La Follette committee reports are filled with instances of the use by Allis-Chalmers of the strike-breaking, espionage, and antilabor services of the National Metal Trades Association.

A former president of this company, Mr. Speaker, was a leading contributor to and official of the isolationist, nationalist America First Committee. It is not without significance, I think, that the arrogance, stubbornness, and refusal to bargain in good faith of this company resulted in 1941 in a long strike which materially impeded this country's armament program. It was then, you remember, that the America First Committee was at the height of its campaign to sabotage this country's defense plans. Nor is it without significance that the terms proposed by the National Defense Mediation Board, which were finally accepted by the company as the basis for settlement, were substantially the same as those offered weeks earlier by the union.

The current strike at Allis-Chalmers contains all of the factors inherent in a situation in which an antilabor management, determined above all else to smash the union of its employees, has forced its workers to go on strike, has whipped up an unprecedented campaign of antiunion hysteria, and has consistently refused to negotiate in good faith for the equitable settlement of the strike.

More than 8 months ago, the workers at the Allis-Chalmers plant, in West Allis, Wis., voted 8,091 to 251 to go out on strike to win the same contract and wage adjustments which had been granted months earlier by the vast majority of companies in this country. Their demands were for an 18½-cent wage increase, a workable grievance procedure, and union-security provisions.

But let me say that long before it voted to strike, local 248, United Automobile Workers, CIO, which has been certified by the National Labor Relations Board as bargaining agent for the Allis-Chalmers workers, attempted for months to get some kind of settlement which would have made a strike unnecessary. To all the union's proposals, the company's answer was "No." Not only did the company refuse even to consider the union's proposals, Mr. Speaker, but it refused even to agree to certain adjustments which had been ordered by the National War Labor Board.

The National War Labor Board had, on the basis of local 248's perfect record of no work stoppages during the war, recommended that the company agree to a standard maintenance-of-membership clause. This the company refused to do.

The National War Labor Board, after extensive surveys, had established the fact that wages at Allis-Chalmers are considerably below those paid elsewhere in the Milwaukee area, and had recommended a 19½-cent wage increase for certain classifications of workers. This recommendation was made, Mr. Speaker, in December 1945, over a year ago, but the company has stubbornly and defiantly refused to put it into effect.

Still, in an effort to settle the dispute without the necessity of striking, local 248 proposed in negotiations that the issues of wages, union security, and grievance procedure be submitted to arbitration for a final and binding decisions.

But this proposal, too, was rejected by the company. How can we speak seriously of preventing strikes by imposing restrictions on unions, Mr. Speaker, when the most devastating strike in the United States has resulted from a company's refusal to accept the union's offer of arbitration? This offer, I might add, has been renewed repeatedly by the union, and it has been supplemented by the union's proposal to refer the dispute to a Presidential fact-finding board. But every single union proposal has been rejected by the Allis-Chalmers Co., and this despite the fact that the Milwaukee County Board of Supervisors overwhelmingly voted in favor of the union's suggestion for arbitration.

It is perfectly clear, Mr. Speaker, and the conclusion is inescapable, that the Allis-Chalmers Co. deliberately created this strike and has deliberately refused to settle it.

Allis-Chalmers has refused to accept the union's offers.

Allis-Chalmers has refused to accept Presidential fact finding.

Allis-Chalmers has refused to accept arbitration.

Fattened with high wartime profits and subsidized by Federal carry-back tax rebates, Allis-Chalmers has embarked upon a program of unconcealed union busting. It has hired strikebreakers, it has had the police plant labor spies in union meetings, and it has had many of its striking employees beaten by police within its own plants.

Its most recent maneuver has been the organization of an ill-disguised company union; and the Wisconsin Employment Relations Board has granted that union's petition for an election to determine the bargaining representatives for the Allis-Chalmers workers. I must remind you that the legally constituted representative for the Allis-Chalmers workers is local 248, UAW-CIO, which has been certified by the National Labor Relations Board. The decision to order a new election—a decision which is in violation of Federal law—was made not by any impartial Federal agency, but by the Wisconsin Employment Relations Board.

If this precedent in Wisconsin is not stopped it will be carried into all other States and seriously disrupt industrial relations.

In an effort to stop this obviously illegal act, local 248 applied to the Federal courts for a temporary injunction restraining the Wisconsin Employment Relations Board from holding the election. The hearing on the union's petition was held before Judge F. Ryan Duffy of the Federal district court in Milwaukee on January 9, 1947. On that same day Judge Duffy handed down his decision denying the union's request for an injunction. It was handed down, Mr. Speaker, despite the fact that briefs filed by the National Labor Relations Board and the Department of Justice in a similar case pending in the United States Supreme Court, dealing with the question of the constitutionality and scope of authority of State labor relations boards, and supporting the position taken by local 248, were still in the mail and had not yet arrived in Milwaukee. Judge Duffy's decision was made with a haste which was injudicious. Judge Duffy who handed down the decision against the Allis-Chalmers workers' union is a close relative—a brother-in-law—of Mr. Harold W. Story, vice president and general attorney of the Allis-Chalmers Manufacturing Co. and chief architect of its antilabor policy. Under the circumstances, the impartiality of Judge Duffy's decision could be subject to grave doubt. But Judge Duffy apparently did not for a moment entertain the thought of disqualifying himself.

The conclusion seems clear, Mr. Speaker, not only that responsibility for the Allis-Chalmers strike rests solely with the company, but that the company has apparently benefited by an unusual judicial decision, which upsets the original election held by the NLRB and thereby abrogates the legal rights of the bargaining employees.

Could the brother-in-law relation between the vice president of Allis-Chalmers, Mr. H. W. Storey, and the judge of the Federal court, Judge Duffy, have been an influence in the judge's decision?

I submit that no legislative program concerned with labor-management relations can be just or equitable which concerns itself only with punitive measures against labor and which ignores the existence of a conspiracy hatched by the powerful and influential captains of American industry to destroy the bargaining power of their employees by smashing unions.

STATEMENT BY CONGRESSMAN CHARLES J. KERSTEN, OF MILWAUKEE

I am amazed that Congressman Price of Illinois should see fit to criticize the action of a Federal judge of Wisconsin, making it possible for the thousands of workers of the Allis-Chalmers Co. to have an election to determine their real leadership.

The gentleman from Illinois criticizes the Federal judge for acting in the case because he happens to be a relative, by marriage, of an Allis-Chalmers official. The gentleman obviously does not know the facts. The CIO-UAW through its attorney sought to get Federal Judge Duffy to enjoin the State board's order for a new election. The union chose Judge Duffy. The company was not even a party to the action. The States attorney general on the other side of the same case sought to take the matter out of the court of Judge Duffy. The CIO-UAW attorney opposed this motion.

Judge Duffy refused an injunction against the election ordered by the Wisconsin State board. The union appealed to the Federal circuit court of appeals. The appellate court upheld Judge Duffy. The election is now to be held. Does Congressman Price oppose a free election?

It has been charged many times that the CIO-UAW union is dominated by Communists, that a small clique has controlled the thousands of workers and has prevented a settlement of this strike which has now been going on for 9 months. Does the gentleman want to prevent the workers from, at this time, freely expressing their will and perhaps determining that this union does not really represent them?

Whether local No. 248 is communistically dominated, or whether the company is antilabor, the free election of all the workers now made possible by Judge Duffy's decision will protect the rank-and-file workers. It will injure only the labor racketeer.

(STATEMENT INSERTED AT THE REQUEST OF SENATOR THOMAS)

This, in brief, is the story of the issues involved in the Allis-Chalmers strike.

That strike—which is now in its tenth month and which is the biggest strike in the country at the moment—developed directly out of the refusal of the Allis-Chalmers Co. to abide by the law of the land and put into effect certain recommendations which had been made by the National War Labor Board.

On April 15, 1944, the contract between the company and local 248, UAW-CIO, expired. For 30 days prior to the expiration, the union attempted to negotiate a new contract. Its attempts, however, proved unsuccessful. The case was taken before the War Labor Board; and from April 15, 1944, to April 30, 1946, the union and the company operated under the old contract. Despite the fact that the company refused to agree to any of the union's proposals on wages and on a new contract, the members of local 248 continued to work without any stoppages or strikes.

In September 1945, the War Labor Board issued a directive order concerning vacations. The company appealed this to the National War Labor Board, but the regional board's decision was upheld. The company, however, refused to put the directive into effect in its entirety.

In December 1945, the War Labor Board issued its recommendations with respect to the remaining issues. It recommended the inclusion in the contract of a standard maintenance-of-membership and check-off clause. This, too, the company refused to apply. In addition, the Board recommended that all workers in the tool and die room be granted a 19½-cent wage increase to bring wages in line with those paid elsewhere in the Milwaukee area. This, remember, was prior to the establishment of the national wage pattern of 18½ cents. But, this recommendation, too, was not applied by the company.

Still, in an effort to settle the dispute, the union proposed that all unresolved issues be settled either through Government fact finding or through arbitration. It stated that it would accept those conclusions as final and binding, and it suggested that the company do the same.

This offer, too, the company rejected. It has since been repeated by the union many times during the course of the strike, but the company refuses acceptance either of arbitration or of fact finding.

The Allis-Chalmers Co., by the record it has established in this case, stands guilty of having refused to abide by the Government's labor policy, and it alone is responsible for the fact that the workers were forced out on strike and for the fact that settlement has not yet been reached.

FEBRUARY 14, 1947.

MR. PHILIP MURRAY,
President, Congress of Industrial Organizations,
 718 Jackson Place N.W., Washington, D. C.

DEAR MR. MURRAY: At the request of Senators Ellender and Murray made during my testimony before the Senate Committee on Labor and Public Welfare this morning I am enclosing copy of my statement.

A copy of this letter is being sent to Senator Robert A. Taft, chairman.

Very truly yours,

H. W. STORY, *Vice President.*

**STATEMENT OF T. G. GRAHAM, VICE PRESIDENT,
B. F. GOODRICH CO.**

Senator AIKEN. Mr. Graham, I understand that you will require 20 to 30 minutes to summarize your statement which you have prepared; or do you desire to read it?

I think we can give you that length of time, so you might as well proceed.

Mr. GRAHAM. Mr. Chairman, my name is T. G. Graham. I am vice president of the B. F. Goodrich Co., founded in 1870. My responsibility covers the manufacture of the products we make throughout the world. While automotive tires and tubes constitute the major items produced, we also manufacture many other products in this country. Our main factories are in Akron, Ohio. We have plants in 16 other cities and towns located in 12 States, and employ more than 46,000 persons.

My own experience in the manufacturing field covers a span of more than 32 years, during which time I worked at all levels of management in both union and nonunion plants.

I believe that sound relationships between employers and employees cannot be achieved solely through legislation. Such a relationship can be built only by constantly improving in-the-plant, and on-the-job relations between each man, his fellow workers, and those responsible for the direction of the work.

Sound relationships can exist only when the right policies, practices, and attitudes have been developed in each company, in each plant, and in each department within the plant.

There is a definite place in the field of industrial relations for legislation. This place is concerned with setting the rules of conduct—the legal climate—for management and for unions in such a way that the performance of the job will be encouraged, and not impeded.

It is to the mutual advantage of all parties concerned—employers, employees, unions, and society at large—that fair and workable legislative rules be established.

Under the American political philosophy these rules should protect the rights of minorities, as well as the rights of majorities.

They should protect the rights of individuals as well as the rights of society at large. They should permit a proper balancing of the interests of all parties concerned so that none, by the unwise exercise of the powers granted, can work undue hardship on any of the others.

Now, I would like to take up a few topics which I think are pertinent to the legislation you have under consideration. The first is individual productivity.

The tremendous production capacity of American industry has been widely publicized during recent years. However, very little has been said about the important fundamental on which the only true measurement of our production ability can be based—namely, individual productivity.

I believe that in the future, as it has been in the past, the best interests of all—the public, the employer, and the employee—will be served only if the productivity of each worker is increased.

During the past decade there has been a widespread dissemination of the unsound philosophy of more and more pay for less and less work. Limits on the daily production and earnings of employees are commonly established and enforced by collective-bargaining representatives.

Our experience in a recent normal day's work—I have reference to a day of 24 hours, of four 6-hour shifts, specifically, the day of January 23, 1947, in one of our manufacturing divisions—was that of 3,778 men working on that day, over 70 percent quit work in excess of 30 minutes before the end of the shift closing time. In fact, 223 quit work 60 minutes before the shift closing time.

Senator MURRAY. Was there any problem of shortage of materials?

Mr. GRAHAM. There was not.

Senator MURRAY. None whatever?

Mr. GRAHAM. None. These men had simply completed the day's work.

Senator MURRAY. It was not a shortage of materials?

Mr. GRAHAM. No. They had made all the money that the union limits would permit them to make.

Senator MURRAY. There was nothing to justify that?

Mr. GRAHAM. There was nothing to hamper them from going on and earning more money by producing more goods.

Senator AIKEN. This was a normal day?

Mr. GRAHAM. This was a normal day, January 23, 1947, a 24-hour day of four 6-hour shifts, in the tire division of our Akron plant.

Senator AIKEN. And only 20 men remained at shift closing time?

Mr. GRAHAM. That is right.

Senator ELLENDER. Was that because they had not completed their tasks?

Mr. GRAHAM. They probably stayed at their work because they wanted to earn all that they could.

Senator ELLENDER. Well, with regard to the 20 men that remained, did they produce more, and thereby make more money?

Mr. GRAHAM. Well, Senator Ellender, they may have been workers who stayed at their work because they were paid on an hourly rated basis.

Senator ELLENDER. What effect had the walking out of these other men upon them?

Mr. GRAHAM. They did not walk out, Senator, they completed their duties, their day's work, and they stayed in their departments or in the locker rooms.

Senator ELLENDER. And remained idle?

Mr. GRAHAM. That is right.

Senator ELLENDER. I see.

Mr. GRAHAM. What is needed today, in order to retain America's foremost position in the industrial world, is to utilize our technological advantages to the fullest by removing these union-imposed limitations on individual productivity. An approach to this problem is found in section 204 (e) of Senate bill 55, which would remove the activities therein covered from the Norris-LaGuardia Act and subject them to the antitrust laws. It seems to me, however, that any indi-

vidual who participates in a combination, conspiracy, or other concerted action for the purpose of restricting production should also lose his status as an employee for the unfair labor practice and representation purposes of sections 8, 9, and 10 of the National Labor Relations Act. This would have a far greater restrictive effect on the work limitations which so frequently are maintained, but not openly endorsed, by the labor organization.

The next topic is responsibility of the union.

A major contributing factor to disturbed industrial relations and reduced mass production is the failure of the labor organization or its individual members to observe the terms of the collective-bargaining agreement. Strikes or work stoppages constantly occur without resort to the established grievance procedure or even notice to or opportunity for the employer to take any action.

The United Rubber, Cork, Linoleum, and Plastic Workers of America, CIO—that is, the URWA—which represents a large majority of the production and maintenance workers in the rubber industry, is admittedly one of the more responsible unions. Last year the industry was able to work out its wage problem with this union on the 18½-cents-per-hour pattern without a major strike.

Nevertheless, during 1946, more than 2,400,000 man-hours of production were lost through work stoppages and organized slow-downs in those plants of the four major rubber companies in which the employees are represented by this union. In the B. F. Goodrich Co.'s Akron plants alone, with a no-strike pledge and complete arbitration machinery in our collective-bargaining agreement, we experienced 110 work stoppages in 1946.

These stoppages meant a loss of work ranging from 10 hours to 10,000 man-hours in each instance.

The labor organization should be made responsible in damages to the employer for violations of the collective-bargaining agreement on the part of its authorized agents or representatives. This would be accomplished by section 203, subsections (a), (b), and (c), of Senate bill 55.

Senator ELLENDER. How did you reach these figures with reference to the stoppages and the loss due to the stoppages?

Mr. GRAHAM. I presume it would take the effort of qualified engineers and accountants to determine what the true losses are. I am not thinking of losses in profits; I am thinking in terms of losses that result from work stoppages in the way of destruction of materials, and so forth.

You may know that in our business we use materials that when compounded must be used within a given length of time or else the material "sets-up," as we say, and therefore is not good material to use in normal production. In other words, the material will become defective if it is not used within a given length of time.

Senator ELLENDER. Why is it not used in a given time? Is it caused by slowing down?

Mr. GRAHAM. If it is not used within a given time, then is it not good material to use.

For example, when we calender a rubber compound, we may make it into a rubber sheet, or we may calender the rubber on a fabric base,

making it into material that can be assembled in layers, if you will, or plies to be built into a finished product.

Now, if that material is not used within a reasonable length of time, depending on how fast it may cure, it has lost its usability; it will become defective and not fit for use.

Senator ELLENDER. Well, I understand that now. But the fact that it is not used promptly is due to these men slowing down, is it not?

Mr. GRAHAM. It may be due to no work being done as a result of the work stoppage.

Senator ELLENDER. Are they paid during that time by you?

Mr. GRAHAM. They are not paid during that time.

Senator ELLENDER. Do they walk out on you? I am just trying to clarify that in my mind. I simply cannot follow you about these work stoppages.

Do they actually walk out on you?

Mr. GRAHAM. In a work stoppage they may walk out; they may mill around in the department; they may leave their particular department and go into another and pull the switches and stop others from working; they may do a variety of things in a lawless fashion.

Senator ELLENDER. Well, the damages for which you say the company should be paid could be easily estimated?

Mr. GRAHAM. Yes, sir.

Senator AIKEN. You say that you have 46,000 employees now, approximately?

Mr. GRAHAM. Yes.

Senator AIKEN. How does that compare with the number of employees before the war?

Mr. GRAHAM. I think it is about 50 percent more than we had in 1939.

Senator AIKEN. Well, how does the output for 1946 compare with 1939? Do you have a record of that?

Mr. GRAHAM. The productivity per person is down, roughly, about 23 percent to 25 percent, in those plants that were in operation prior to the war and which are still in operation.

Senator AIKEN. Do you have all the raw material that you need all the time?

Mr. GRAHAM. Yes.

Senator AIKEN. So, you think that the lower productivity is wholly due to less work per man employed?

Mr. GRAHAM. Yes. Our technological progress has continued; but our workers have been discouraged from producing any more.

Senator AIKEN. As your technological prowess increases, is there a tendency to let up on the work more and more on the part of the employees? Do they resent the technological improvements, and does that cause them to slow down somewhat, in order to keep everybody employed?

Mr. GRAHAM. In our union agreements there is a pledge that the union will cooperate in the effective use of our facilities. Over a period of years, we have taken out of the work done by our employees as much as we could of so-called "jackass" effort as possible.

You may know that in a rubber plant making tires and tubes that the connected horsepower per employee is relatively high.

I might say that in our Akron plant, where we employ 16,000 people, we have connected horsepower of over 100,000; our electrical demand runs between 45,000 and 50,000 kilowatts.

In other plants, we are using relatively high amounts of electrical energy to do the work.

I might also say that there is no so-called speed-up, or no effort to cause the worker to do anything beyond his physical ability to do it without undue strain on him.

Senator ELLENDER. When you say "productivity is down 23 percent," would I be correct in saying that it now requires 100 men to do, today, what it required 77 men to do before the war?

Mr. GRAHAM. Well, now, that depends upon—

Senator ELLENDER. Or would that be the way you measure it?

Mr. GRAHAM. It depends on how you apply your percentages; that is, whether you start from the present base or the prewar base. I'd say that it requires 100 people to do what 82 or 83 did before the war.

Senator ELLENDER. I thought you said it was down 23 percent, which would make it 77.

Mr. GRAHAM. The 23 percent is right, but you have got to add on the prewar base instead of taking from the present base.

Senator ELLENDER. And your wage scale has gone up considerably compared to what it was before the war?

Mr. GRAHAM. Yes. Our average rate, straight time, is \$1.42 per hour.

I am corrected by my associate. The gross average hourly rate is \$1.42. Our straight-time average is \$1.375. Just before the war it was over \$1 an hour, just in excess of \$1 per hour.

Senator ELLENDER. I suppose that is why we are paying about 40 percent more for our tires.

Mr. GRAHAM. I wish you were paying that much more, Senator. [Laughter.]

Senator ELLENDER. I thought I was.

Senator AIKEN. All right, you may proceed, Mr. Graham.

Mr. GRAHAM. All right, sir.

It is equally necessary to hold the individual employee responsible for the results of his failure to observe the terms of the collective-bargaining agreement. For this purpose section 203, subsection (d), of Senate bill 55 would deprive the employee of his status as an employee under sections 8, 9, and 10 of the National Labor Relations Act for participating in an unauthorized strike or other interference with the performance of an existing collective-bargaining agreement "in violation of such agreement." If this language means that this subsection is applicable only to agreements which contain no-strike clauses, it will be of little help because such a clause would promptly disappear from all collective-bargaining agreements. After all, a contract in itself implies continuity of operations and the peaceful settlement of disputes through the full utilization of the grievance procedure. In my opinion, the phrase "in violation of such agreement" might be construed to defeat the purpose of this subsection and should be omitted unless clarifying language is inserted.

Certain rules of conduct should be made compulsory before the exercising of the strike weapon. Among these are the requirements of a strike vote by secret ballot, after a cooling-off period of 60 days following the breaking off of bargaining negotiations. Such election should be held under impartial supervision and at the employee's place of employment in order to assure the casting of ballots by the greatest number of eligible employees. A strike should be permitted only if a majority of the members of the bargaining unit vote and a majority of those voting favor the strike.

Presently strike votes are conducted by the union and only union members are permitted to vote, although the issues involved and the results of the strike vote affect all members of the bargaining unit in the same degree.

As a result, the nonunion members of the bargaining unit, whom the law recognizes as bound by the acts of the bargaining representative fully as much as are the union members of the bargaining unit, are excluded from a voice in strike votes under the system in effect today.

Section 3 of Senate bill 55 would postpone a strike or lock-out only if and when the Board proffers its services. I believe the rules of conduct should be extended to apply to all cases of labor disputes affecting commerce. I believe they are necessary in order to assure to each employee affected an opportunity for free expression of his wishes on a matter which so vitally affects his welfare.

INDUSTRY-WIDE BARGAINING

My experience with collective bargaining during recent years has been largely with the industrial or vertical type of union in mass-production industry. For this reason I should like to make it clear that my comments on the subject of company-wide and industry-wide collective bargaining are limited to bargaining between vertical unions and mass-production industry.

I am opposed to both company-wide and industry-wide collective bargaining. In my experience, the further collective-bargaining settlements are removed from the local plant level, the less they reflect the interests of either the employees or the company, or the community in which the plant is located.

The further the power and authority to bargain collectively is removed from the local plant personnel to national and international union officers, the more arbitrary and unrealistic the bargaining becomes. This is equally true on the management side of the bargaining table. In any situation where great power over others is concentrated in the hands of a few the inevitable result is arbitrary action without full consideration of the rights of the individuals concerned and the rights of the public.

Industry-wide bargaining should be prohibited because of its restraint on trade and necessarily harmful effect on the public. It is just as wrong for unions of competing companies to combine to bargain with regard to rates of pay, hours of work, and other conditions of employment upon threat of closing the plants, as it is for two or more

competitive employers to conspire to fix prices or restrict production in restraint of trade.

When several plants of a company are parts of one industry, the different living-cost conditions, the different labor-market positions, the different mechanical efficiency of plants, and the different personal productivity of workers combine to justify individual consideration and individual settlements. When, as with the large rubber companies, the various plants cover a number of different industries as well, and are in competition with individual companies operating solely within one of the specialized industry fields, the only practical and equitable approach to collective bargaining is on a plant-by-plant basis.

Therefore, I urge that Senate bill 133 or similar legislation be enacted, but only after amendment so as to restrict the designation of employee representatives to labor organizations whose jurisdiction would be limited to the employees of one employer in the labor-market area.

Senator ELLENDER. Has any effort been made in the past to get the companies engaged in the production of rubber goods to bargain with labor?

Mr. GRAHAM. There has been. Efforts were made over a period of years in Akron to get the three large rubber companies, Goodyear, Firestone, and B. F. Goodrich, to bargain as a unit in that area. We have resisted doing that.

Senator ELLENDER. You have never done it?

Mr. GRAHAM. We have never done it. Now, there is a four-company agreement that was made March 2, 1946, and which is still applicable, dealing with a horizontal wage increase of 18½ cents per hour, the pattern of early 1946, and effective in the plants of the four major companies across the country.

Senator ELLENDER. What prompted that?

Mr. GRAHAM. A desire on the part of the International, URWA, supported by the administration of our Government.

Senator ELLENDER. I see. And, even though you are opposed to that—

Mr. GRAHAM. Even though we were opposed to it, in order to arrive at a peaceful settlement and avoid labor disturbances in the recovery period, we went along with it.

Senator ELLENDER. Would you favor a law prohibiting it, as far as you are concerned?

Mr. GRAHAM. We think a law should prohibit it.

Senator AIKEN. Do all the same terms of employment prevail in all the larger companies in the Akron district?

Mr. GRAHAM. Well—now, you have got to define pretty closely what you mean.

Senator AIKEN. Well, I mean primarily wage rates.

Mr. GRAHAM. Wages?

Senator AIKEN. Yes.

Mr. GRAHAM. I would say that the four major companies, Goodyear, Firestone, General, and B. F. Goodrich, pay wages, which, on the average, are practically comparable.

Senator AIKEN. But there may be differences in the terms and in the other benefits?

Mr. GRAHAM. Yes.

Senator AIKEN. So there is a difference in the over-all terms of the different companies?

Mr. GRAHAM. You have got to bear in mind that the policies of the companies, over all, may be different.

Senator AIKEN. Yes.

Mr. GRAHAM. And that, of course, affects the judgment of the company in determining what they can and cannot afford to grant.

Senator ELLENDER. Mr. Chairman, I notice that the next four pages of this witness' testimony deal with boycotts, sympathy strikes, and jurisdictional disputes, as well as supervisory employees.

We have had a great deal of testimony on those subjects, and I wonder if the witness would not be willing to state his views in a few words and then skip on.

Mr. GRAHAM. I could do that.

Senator ELLENDER. You could then go on to the proposed amendments.

Mr. GRAHAM. With regard to boycotts, sympathy strikes, jurisdictional disputes, and such matters, I could cite experiences that we presently are going through; they are the same experiences, practically, as have been gone through by others.

I definitely recommend the enactment of legislation similar to that proposed in section 202 of Senate bill 55 and section 10 of Senate bill 360 although the latter bill should be expanded to protect the employer by the same penalties provided for boycotts by Senate bill 55, namely, to make the offending party subject to both criminal and civil penalties. In addition, we provide injunctive relief to the damaged party.

Senator AIKEN. Your statement, Mr. Graham, will be printed at the end of your testimony, as though it was read.

Mr. GRAHAM. All right, thank you.

Now, on the subject of supervisory employees, we at the B. F. Goodrich Co., in Akron, experienced the only long strike in our history because of a strike of our supervisory employees instigated and directed by the FAA, the Foreman's Association of America.

I think it might be well if I related here my thinking, at least, on this experience, because out of that experience I have had an opportunity to come to some conclusions which I believe to be pertinent.

I have tried to think of this matter from the viewpoint of the foremen as well as from the viewpoint of an officer of the company. I do not believe there is any difference between our viewpoints or our interests if the problem is carefully thought out. I cannot accept any other premise than that the foremen and I are members of the same team and are working toward the same end.

If you prefer that I not go on with this, I am quite willing to do as you direct. I know that you certainly must be thoroughly familiar with our situation.

Senator ELLENDER. Well, you have your case stated in your brief, and we have heard much similar testimony.

Senator AIKEN. As I said, your complete statement will be printed in the record.

Senator ELLENDER. That is right.

Mr. GRAHAM. I would like to emphasize, if I may, the middle paragraph on page 10.

I know that unionism is opposed to the philosophy of individual initiative and effort. Unionism of foremen means standardization of effort and of pay. Unions advocate advancement in accordance with seniority, which deadens initiative and desire to get ahead.

It is a basic concept of our law that an agent in a position of trust may not serve conflicting interests, that no man should serve two masters.

Unless management can have the undivided allegiance of its foremen at the first point of its contact with the direct workers, there will result a loss of mutual confidence. The general level of efficiency will decrease and production costs will increase because of the practice of protecting "weak sisters" among both foremen and workers and because of the leveling of individual initiative, effort and reward, the natural result of union emphasis on seniority. At the same time a loss of any assurance of maintenance or improvement of quality and output of product will follow.

Unless managements and unions are both free to formulate and carry out their own policies, there can be no true collective bargaining. The Board's position is that all supervisory personnel, including vice presidents, have collective-bargaining rights under the act. I submit to you that the American sense of fair play denies to any man the right to be on both sides of the table.

If, instead of foremen being represented by the worker's union there should be both a foremen's union and a worker's union in the same shop, the two labor organizations would either collaborate with each other or fight with each other and each would be equally detrimental to the employer's relations with his employees.

Unionization of foremen would be equally harmful to the opportunity of advancing from the ranks to upper levels of management, which has been the traditional practice in American business.

Other proposed amendments to NLRA; employer's right of election: Under the rules of the National Labor Relations Board the right to petition the Board for an investigation and certification of collective-bargaining representatives of employees is available to the employer only if there are two or more unions asserting conflicting claims to majority designations. These rules tend to perpetuate the status of the existing collective-bargaining representatives even if it has ceased to truly represent the members of the bargaining unit simply because, as a practical matter, no one other than the representative of a rival union can petition the Board for an election. Therefore, the act should be amended to make it mandatory upon the Board to hold an election of the employees upon the petition of the employer, at intervals of not less than 1 year or upon the termination of the collective-bargaining agreement.

Furthermore, in practice, the Board ordinarily refuses to order an election within 1 year after its certification of a bargaining representative even though a majority of the employees in the unit repudiate their bargaining representative and requests an election. In my opinion it should be made mandatory on the Board to hold

an election whenever requested to do so by a majority of the eligible employees, regardless of the time elapsed since the last election.

Senator ELLENDER. How about giving the employer the right to ask for an election? Someone has suggested that.

Mr. GRAHAM. That is what I said, in effect, because the request may very well be made through an employer presenting a petition of the majority of his employees to the National Labor Relations Board.

Senator ELLENDER. What I had in mind was directly, not by consulting.

Mr. GRAHAM. I think there should be some limitations that you should recognize there, otherwise the Board might be loaded up with a lot of requests from employers. I have covered this in my written statement.

I have in mind here the situation where a group of employees have organized into a union whose terms of contract cannot be complied with by the employer without his going broke, and the employer tells the employees that, through their union representatives, and the employees finally are convinced that that is so, because there is no work being done in the meantime.

Senator ELLENDER. I see.

Mr. GRAHAM. Then, they go to the employer and they tell him that they understand that he can do nothing for them and that they cannot do anything for themselves because they are not an organized group.

Now, if they can go to the employer and the employer can say to them, "If you give me evidence that you would like to have another election by a majority of you signing a petition to that effect, I can then take it to the National Labor Relations Board in this region and then, perhaps, I can help you," that is what I mean.

But today he is helpless to do it. You may know that the present rules are that a year must elapse before another election can be held.

Senator ELLENDER. Yes.

Mr. GRAHAM. Now, the scope of collective bargaining. The National Labor Relations Act is also deficient in not fixing the scope of collective bargaining. Because of this the Board has been enabled to hold the employer guilty of an unfair labor practice for refusal to bargain under circumstances which I am sure were never intended by Congress. The Board has held that the employer has not bargained in good faith unless he has made a counterproposal to any demand made by the union. To carry this to the extreme, the holdings of the Board can be interpreted to mean that if the bargaining representative requests a wage increase of 10 cents per hour, the employer must make a minimum counteroffer of, say, 1 cent per hour.

I urge that the act be amended to fix the limits of the area of collective bargaining and to define the extent to which the parties must go to comply with their obligation to bargain collectively.

Obligation to bargain in good faith: The National Labor Relations Act now places an obligation on the employer to bargain in good faith with the certified bargaining agent of his employees. No such obligation is now placed on the bargaining agent. I am convinced that not

only in all fairness but also in order to carry out the very purpose of the act, it should be amended to impose the same obligation on both parties to the collective-bargaining agreement.

Unfair labor practices by labor organizations: The act is further one-sided in that it prohibits certain acts of the employer as unfair labor practices, but fails to impose any restrictions on the collective-bargaining representative. The worker should be fully protected in his rights to self-organization and to collective bargaining through representatives of his own choice, and this protection should be extended him as against labor organizations equally as well as against his employer. Furthermore, it should be made an unfair labor practice for any collective-bargaining representative to call or threaten to call a strike without either prior recognition by the employer or certification by the Board, or to commit or threaten to commit any act of violence on the person or property of a worker or his family, or to seize, damage, or prevent access to the property of an employer or withdraw essential maintenance employees from his plant. Where such acts amount to an unfair labor practice when performed by a labor organization or its authorized agent, they should when committed by the worker be made to deprive him of his status as an employee under the act.

With regard to the right of free speech, I do not think we need emphasize that. That has been gone into fully by other witnesses.

Senator AIKEN. Yes.

Mr. GRAHAM. I suggest the separation of the functions presently vested in the Board.

Closed shop: In this country, a human being enjoys certain inalienable rights. They are his by moral and social sanction. They are his by law. These rights must be respected no matter what a person's occupation may be. A person's politics, religion, or fraternal affiliation should be his to select. What a man joins or does not join should be for him to decide.

The closed shop, union shop, preferential shop, maintenance of membership, compulsory check-off, or any other arrangement which makes a man's right to work contingent upon his membership in or financial contribution to a union is directly contrary to the democratic principles of our country. I strongly urge the enactment of Senate bill 105 to restore these fundamental rights to the workingman.

I urge further that compulsory financial contributions by workers to unions be declared illegal and that no arrangement for the check-off of union initiation fees and membership dues be permitted except as each employee voluntarily authorizes such check-off deductions in writing for a specific period not to exceed the effective life of the collective-bargaining agreement. To preserve the individual's freedom of action, the renewal of a collective-bargaining agreement containing a voluntary check-off should require that the check-off provision shall be effective only as to those employees who specifically authorize the continuation of such deductions during the period for which the agreement has been renewed.

Senator AIKEN. With regard to the portal-to-portal claims, that has not come before our committee.

Mr. GRAHAM. All right, sir.

Senator AIKEN. However, we will print the entire testimony in the record.

Mr. GRAHAM. All right, sir. I have just two sentences I would like to read.

Senator AIKEN. Well, we can hear the two sentences, I think.

Senator ELLENDER. Yes; but that is before another committee.

Mr. GRAHAM. The only comment I have to make is this. At the present time there have been filed against the B. F. Goodrich Co. four portal-to-portal suits claiming a total of \$26,000,000 at our Akron plants; \$1,000,000 at our Cadillac, Mich., plant; and an unnamed amount at our Niagara Falls plant, plus attorney's fees and costs in each case.

The recent decision of Judge Picard dismissing the complaint of the employees involved in the Mount Clemens Pottery case, in which I understand the maximum time consumed by any employee in preliminary activities was 9.7 minutes, should not be allowed to deter this Congress from depriving the courts of jurisdiction to hear and maintain such portal-to-portal claims, fixing a 1-year statute of limitations for the bringing of suits for all other back-pay claims, validating the bona fide settlement of such claims and correcting the present uncertainties under the act.

Thank you, Mr. Chairman.

Senator AIKEN. Are there any questions, Senator Ellender?

Senator ELLENDER. No questions.

Senator AIKEN. We thank you, Mr. Graham. and your prepared statement will be printed in the record.

(Statement referred to is as follows:)

STATEMENT OF T. G. GRAHAM BEFORE THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, FRIDAY, FEBRUARY 14, 1947

Mr. Chairman and members of the committee, I have been requested by your committee to appear here today and to state my views on industrial relations, based on my experience.

My name is T. G. Graham. I am vice president of the B. F. Goodrich Co., founded in 1870 and now the fourth largest manufacturer of rubber products. While automotive tires and tubes constitute the major items produced, we also manufacture many other products. Our main factories are in Akron, Ohio; we have branch plants in 16 other cities and towns located in 12 States, and employ more than 46,000 persons.

My experience in the manufacturing field covers a span of more than 32 years, during which I have worked at all levels of management in both union and non-union plants.

In appearing before you today to discuss questions concerning labor legislation, I would like to preface my remarks with a short statement of the conditions which I think are necessary if we are to establish sound and lasting relationships between business concerns, their employees, and the unions which are designated to represent those employees in collective-bargaining matters.

I believe that sound relationships between employers and employees cannot be achieved solely through legislation. Such a relationship can be built only by constantly improving in-the-plant and on-the-job relationships between each man, his fellow workers at his own level, and those responsible for the direction of the work. These relationships can exist only when the right policies, practices, and attitudes have been developed in each company, in each plant, and in each department within the plant.

There is a definite place in the field of industrial relations for legislation. This place is concerned with setting the rules of conduct—the legal climate—for managements and for unions in such a way that the performance of the job will be encouraged and not impeded. It is to the mutual advantage of all parties concerned—employers, employees, unions, and society at large—that fair and workable legislative rules be established. Under the American political philosophy these rules should protect the rights of minorities as well as the rights of majorities. They should protect the rights of individuals as well as the rights of society at large. They should permit a proper balancing of the interests of all parties concerned so that none, by the unwise exercise of the power granted, can work undue hardship on any of the others.

INDIVIDUAL PRODUCTIVITY

The tremendous production capacity of American industry has been widely publicized during recent years. The 1946 production accomplishments have been stated in over-all totals of almost incomprehensible amounts: 87,743,000 automobile tires, 3,091,000 automobiles, 68,000,000 tons of steel, etc. However, very little has been said about the important fundamental on which the only true measurement of our production ability can be based—individual productivity.

I believe that in the future, as it has been in the past, the best interests of all—the public, the employer, and the employee—will be served only if the productivity of each worker is increased.

During the past decade there has been a widespread dissemination of the unsound philosophy of more and more pay for less and less work. In line with this philosophy slow-downs and make-work rules imposed by collective bargaining representatives have seriously retarded individual productivity. Limits on the daily production and earnings of employees are commonly established and enforced by collective-bargaining representatives. Our experience in a recent normal day's work in one of our manufacturing divisions was that, of 3,778 men working on that day—

223 quit work 60 minutes before shift closing time.

6 quit work 50 minutes before shift closing time.

1,959 quit work 40 minutes before shift closing time.

557 quit work 30 minutes before shift closing time.

913 quit work 20 minutes before shift closing time.

100 quit work 10 minutes before shift closing time.

20 quit work at shift closing time.

What is needed today in order to retain America's foremost position in the industrial world is to utilize our technological advantages to the fullest by removing these union-imposed limitations on individual productivity. An approach to this problem is found in section 204 (e) of Senate bill 55, which would remove the activities therein covered from the Norris-LaGuardia Act and subject them to the antitrust laws. It seems to me, however, that any individual who participates in a combination, conspiracy, or other concerted action for the purpose of restricting production should also lose his status as an employee for the unfair labor practice and representation purposes of sections 8, 9, and 10 of the National Labor Relations Act. This would have a far greater restrictive effect on the work limitations which so frequently are maintained, but not openly endorsed, by the labor organization.

RESPONSIBILITY OF THE UNION

A major contributing factor to disturbed industrial relations and reduced mass production is the failure of the labor organization or its individual members to observe the terms of the collective-bargaining agreement. Strikes or work stoppages constantly occur without resort to the established grievance procedure or even notice to or opportunity for the employer to take any action.

The United Rubber, Cork, Linoleum, and Plastic Workers of America, CIO, which represents a large majority of the production and maintenance workers in the rubber industry, is admittedly one of the more responsible unions. Last year the industry was able to work out its wage problem with this union on the 18½-cent-per-hour pattern without a major strike. Nevertheless during 1946 more than 2,400,000 man-hours of production were lost through work stoppages and organized slow-downs in those plants of the four major rubber companies in

which the employees are represented by this union. In the B. F. Goodrich Co.'s Akron plants alone, with a no-strike pledge and complete arbitration machinery in our collective-bargaining agreement, we experienced 110 work stoppages in 1946. The labor organization should be made responsible in damages to the employer for violations of the collective bargaining agreement on the part of its authorized agents or representatives. This would be accomplished by section 203, subsections (a), (b), and (c) of Senate bill 55.

It is equally necessary to hold the individual employee responsible for the results of his failure to observe the terms of the collective bargaining agreement. For this purpose section 203, subsection (d) of Senate bill 55 would deprive the employee of his status as an employee under sections 8, 9, and 10 of the National Labor Relations Act for participating in an unauthorized strike or other interference with the performance of an existing collective bargaining agreement, "in violation of such agreement." If this language means that this subsection is applicable only to agreements which contain no-strike clauses, it will be of little help because such a clause would promptly disappear from all collective bargaining agreements. After all, a contract in itself implies continuity of operations and the peaceful settlement of disputes through the full utilization of the grievance procedure. In my opinion, the phrase "in violation of such agreement" might be construed to defeat the purpose of this subsection and should be omitted unless clarifying language is inserted.

RULES OF CONDUCT FOR STRIKE VOTES

A strike is always an economic waste and not infrequently an extreme social hardship. Under some circumstances situations may develop where workmen may find no reasonable alternative to a strike. In the interests of all concerned the strike weapon should be used only as a means of last resort and only after those employees who must carry its burden have had a full opportunity to make a free choice.

Certain rules of conduct should therefore be made compulsory before the exercising of the strike weapon. Among these are the requirements of a strike vote by secret ballot, after a cooling-off period of 60 days following the breaking off of bargaining negotiations. Such election should be held under impartial supervision and at the employees' place of employment in order to assure the casting of ballots by the greatest number of eligible employees. A strike should be permitted only if a majority of the members of the bargaining unit vote and a majority of those voting favor the strike.

In practice strike votes are conducted by the union and only union members are permitted to vote, although the issues involved and the results of the strike vote affect all members of the bargaining unit in the same degree. As a result, the nonunion members of the bargaining unit, whom the law recognizes as bound by the acts of the bargaining representative fully as much as are the union members of the bargaining unit, are excluded from a voice in strike votes under the system in effect today.

Section 3 of Senate bill 55 would postpone a strike or lockout only if and when the Board proffers its services. I believe the above rules of conduct should be extended to apply to all cases of labor disputes affecting commerce. I believe they are necessary in order to assure to each employee affected an opportunity for free expression of his wishes on a matter which so vitally affects his welfare.

INDUSTRY-WIDE BARGAINING

My experience with collective bargaining during recent years has been largely with the industrial or vertical type of union in mass production industry. For this reason I should like to make it clear that my comments on the subject of company-wide and industry-wide collective bargaining are limited to bargaining between vertical unions and mass production industry.

I am opposed to both company-wide and industry-wide collective bargaining. The further collective bargaining settlements are removed from the local plant level, the less they reflect the interests of either the employees or the company, or the community in which the plant is located. The further the power and authority to bargain collectively is removed from the local plant personnel to national and international union officers, the more arbitrary and unrealistic the

bargaining becomes. This is equally true on the management side of the bargaining table. In any situation where great power over others is concentrated in the hands of a few the inevitable result is arbitrary action without full consideration of the rights of the individuals concerned and the public.

Industry-wide bargaining should be prohibited because of its restraint on trade and necessarily harmful effect on the public. It is just as wrong for unions of competing companies to combine to bargain with regard to rates of pay, hours of work and other conditions of employment upon threat of closing the plants, as it is for two or more competitive employers to conspire to fix prices or restrict production in restraint of trade.

When several plants of a company are parts of one industry, the different living cost conditions, the different labor market positions, the different mechanical efficiency of plants, and the different personal productivity of workers combine to justify individual consideration and settlements. When, as with the large rubber companies, the various plants cover a number of different industries as well, and are in competition with individual companies operating solely within one of the specialized industry fields, the only practical and equitable approach to collective bargaining is on a plant by plant basis.

Therefore, I urge that Senate bill 133 or similar legislation be enacted, but only after amendment, so as to restrict the designation of employee representatives to labor organizations whose jurisdiction would be limited to the employees of one employer in a labor market area.

BOYCOTTS, SYMPATHY STRIKES AND JURISDICTIONAL DISPUTES

Secondary boycotts are a particularly vicious means of enforcement of monopoly and should be prohibited by law. Sympathy strikes are likewise conspiracies in restraint of trade and should be made illegal. Some means should also be taken to relieve the public and employer of the dilemma presented in the form of strikes growing out of jurisdictional disputes. That is, disputes between two or more unions (1) as to the unit appropriate for collective bargaining and as to which union is entitled to representation or (2) as to whose members are entitled to perform particular kinds of work.

We have recently had two instances of costly delay and expense incurred in the way of commitments to contractors whose working forces were held up at our gates pending settlement of the question as to whether they or the members of our plant union were to be allowed to perform the work. One of these involved work by a painting contractor, the other the extension of a water sprinkler system to avoid a definite fire hazard.

I recommend the enactment of legislation similar to that proposed in section 204 of Senate bill 55 and section 10 of Senate bill 360, although the latter bill should be expanded to protect the employer against the second type of jurisdictional dispute by the same penalties as provided for boycotts by Senate bill 55, namely, to make the offending parties subject to both criminal and civil penalties and, in addition, to provide injunctive relief to the damaged party.

SUPERVISORY EMPLOYEES

It was not until 1942, 7 years after passage of the National Labor Relations Act, that anyone supposed that the act might be used to compel employers to bargain collectively with foremen or other supervisory personnel. Management, employees, and unions all looked upon supervisors as members of management. Now, after reversing its position several times, the Board finds no difference between the rights of supervisory personnel and the rights of direct workers under the National Labor Relations Act, saying that "so long as Congress imposes no limitation upon their choice, it is not for us to do so."

I have given a great deal of thought to this proposal of unionization and collective-bargaining rights for foremen. I have tried to think of this matter from the viewpoint of the foreman as well as from the viewpoint of an officer of the B. F. Goodrich Co. I do not believe there is any difference between our viewpoints or our interests if the problem is carefully thought out. I cannot accept any other premise than that the foreman and I are members of the same team and are working toward the same end.

The foremen is management's front line of contact with the direct workers. Our shift and floor foremen supervise a department or smaller groups of men.

ordinarily from 20 to 30. They are salaried men and do no manual work. To the men the foreman is the boss; he is the one from whom they receive their instructions; he is the one to whom they are responsible. Not only is this true in the eyes of the direct workers and management, but the National Labor Relations Board also holds the employer responsible for acts of the foreman under the unfair labor practice provisions of the act. Furthermore, once a man becomes a foreman he is in a class apart from the direct workers, he seldom wants to return to their ranks and usually it is a mistake both from his and his employer's standpoint for him to do so.

It is the foreman's duty to requisition new employees, to train them in their jobs, to see that they turn out satisfactory work, to enforce discipline, and if necessary, to discharge them. He is responsible for quality of product and efficiency of operation. In order to do this the foreman must be alert, see that the materials arrive on schedule, that the tools and equipment are in proper condition, and that his employees are on the job and perform their operations properly. The foreman, as a member of management, receives and acts on complaints and grievances; he is the first step in the bargaining procedure. Our foremen settle the vast majority of our direct workers' complaints.

I know that unionism is opposed to the philosophy of individual initiative and effort. With unionism of foremen would come standardization of effort and of pay. Unions advocate advancement in accordance with seniority, which deadens initiative and the desire to get ahead. Under this system, a foreman would lose the incentive to work hard and progress, because if he had seniority he would get the job anyway, and if has little or no seniority he realizes there is no point in trying.

Frankly I do not see how unionism and collective bargaining rights for foremen can possibly work out. I do not see how we can work together and live together on this basis without a breach in the mutual confidence that is vitally essential for good team spirit and accomplishment. Without confidence in our foremen, misunderstandings of major proportions are bound to develop. In summary, the National Labor Relations Act should be amended to expressly exclude supervisory personnel, and I therefore urge your support of section 202 of Senate bill 55, for the following reasons:

1. It is a basic concept of our law that an agent in a position of trust may not serve conflicting interests, that no man should serve two masters.

2. Unless management can have the undivided allegiance of its foremen at the first point of its contact with the direct workers, there will result a loss of mutual confidence. The general level of efficiency will decrease and production costs will increase because of the practice of protecting "weak sisters" among both foremen and workers and because of the leveling of individual initiative, effort, and reward, the natural result of union emphasis on seniority. At the same time a loss of any assurance of maintenance or improvement of quality and output of product will follow.

3. Unless management and union are both free to formulate and carry out their own policies, there can be no true collective bargaining. The Board's position is that all supervisory personnel, including vice presidents, have collective-bargaining rights under the act. I submit to you that the American sense of fair play denies to any man the right to be on both sides of the table.

4. If, instead of foremen being represented by the worker's union, there should be both a foreman's union and a worker's union in the same shop, the two labor organizations would either collaborate with each other or fight with each other, and each would be equally detrimental to the employer's relations with his employees.

5. Unionization of foremen would be equally harmful to the opportunity of advancing from the ranks to upper levels of management, which has been the traditional practice in American business, because foremen would become accustomed to reliance on group effort and seniority rather than on individual initiative and enterprise.

OTHER PROPOSED AMENDMENTS TO NLRA

1. *Employer's right of election.*—Under the rules of the National Labor Relations Board the right to petition the Board for an investigation and certification of collective-bargaining representatives of employees is available to the employer only if there are two or more unions asserting conflicting claims to majority desig-

nation. These rules tend to perpetuate the status of the existing collective-bargaining representative even if it has ceased to truly represent the members of the bargaining unit simply because, as a practical matter, no one other than the representative of a rival union can petition the Board for an election. Therefore, the act should be amended to make it mandatory upon the Board to hold an election of the employees upon the petition of the employer, at intervals of not less than 1 year or upon the termination of the collective-bargaining agreement.

Furthermore, in practice, the Board ordinarily refuses to order an election within 1 year after its certification of a bargaining representative even though a majority of the employees in the unit repudiate their bargaining representative and request an election. In my opinion it should be made mandatory on the Board to hold an election whenever requested to do so by a majority of the eligible employees, regardless of the time elapsed since the last election.

2. *Scope of collective bargaining.*—The National Labor Relations Act is also deficient because it does not define or fix the scope of collective bargaining. Because of this the Board has been enabled to hold the employer guilty of an unfair labor practice for refusal to bargain under circumstances which I am sure were never intended by Congress. The Board has held that the employer has not bargained in good faith unless he has made a counterproposal to any demand made by the union. To carry this to the extreme, the holdings of the Board can be interpreted to mean that if the bargaining representative requests a wage increase of 10 cents per hour, the employer must make a minimum counteroffer of, say 1 cent per hour.

Recently a trial examiner for the Board ruled that the employer can be required to bargain with respect to pension or retirement plans, thus opening up the area of collective bargaining to insurance, hospitalization, and other welfare plans of a nature not heretofore considered as coming within the scope of collective bargaining. While matters of this kind are beneficial to employees and are provided by many employers, including my own company, they are not properly a part of the ordinary terms and conditions of employment and should be expressly excluded from the area of collective bargaining.

Accordingly, I urge that the act be amended to fix the limits of the area of collective bargaining and to define the extent to which the parties must go to comply with their obligation.

3. *Obligation to bargain in good faith.*—The National Labor Relations Act now places an obligation on the employer to bargain in good faith with the certified bargaining agent of his employees. No such obligation is now placed on the bargaining agent. I am convinced that not only in all fairness but also in order to carry out the very purpose of the act, it should be amended to impose the same obligation on both parties to the collective-bargaining agreement.

4. *Unfair labor practices by labor organizations.*—The act is further one-sided in that it prohibits certain acts of the employer as unfair labor practices but fails to impose any restrictions on the collective-bargaining representative. The worker should be fully protected in his rights to self-organization and to collective bargaining through representatives of his own choice—and this protection should be extended him as against labor organizations equally as well as against his employer. Furthermore, it should be made an unfair labor practice for any collective-bargaining representative to call or threaten to call a strike without either prior recognition by the employer or certification by the Board, or to commit or threaten to commit any act of violence on the person or property of a worker or his family, or to seize, damage, or prevent access to the property of an employer or withdraw essential maintenance employees from his plant. Where such acts amount to an unfair labor practice when performed by a labor organization or its authorized agent, they should when committed by the worker be made to deprive him of his status as an employee under the act.

5. *Right of free speech.*—As the result of recent circuit court decisions, the Board has liberalized its former rulings which made it an unfair labor practice for an employer to voice its opinion regarding unionism of his employees. The act should be amended as proposed in section 5 of Senate bill 360 to protect and preserve to the employer his right of freedom of speech.

6. *Multiple functions of the Board.*—Historically, our system of jurisprudence has been to have conclusions of law determined by a judge, issues of fact tried to a jury, and the prosecution handled by the administrative arm of the Government. The National Labor Relations Board is presently the prosecutor, judge, and

jury. Its only function should be that of an administrative body. It should be limited to the enforcement of the law as determined by the courts or by a commission clothed with judicial powers. Such a commission should be protected insofar as possible from the pressures of the litigants and the influence of the ideologies of a changing personnel. I suggest a separation of the functions presently vested in the Board.

CLOSED SHOP

In this country, a human being enjoys certain inalienable rights. They are his by moral and social sanction. They are his by law. These rights must be respected no matter what a person's occupation may be. A person's politics, religion, or fraternal affiliations should be his to select. What a man joins or does not join should be for him to decide.

The closed shop, union shop, preferential shop, maintenance-of-membership, compulsory check-off, or any other form of arrangement which makes a man's right to work contingent upon his membership in or financial contribution to a union is directly contrary to the democratic principles of our country. I strongly urge the enactment of Senate bill 165 to restore these fundamental rights to the workingman.

I urge further that compulsory financial contributions by workers to unions be declared illegal and that no arrangement for the check-off of union initiation fees and membership dues be permitted except as each employee voluntarily authorizes such check-off deductions in writing for a specific period not to exceed the effective life of the collective-bargaining agreement. To preserve the individual's freedom of action, the renewal of a collective-bargaining agreement containing a voluntary check-off should require that the check-off provision shall be effective only as to those employees who specifically authorize the continuation of such deductions during the period for which the agreement has been renewed.

PORTAL-TO-PORTAL CLAIMS

At the present time there have been filed against the B. F. Goodrich Co. four portal-to-portal suits claiming a total of \$26,000,000 at our Akron plants, \$1,000,000 at our Cadillac, Mich., plant, and an unnamed amount at our Niagara Falls plant, plus attorney's fees and costs in each case. These suits cover but 3 of our 19 plants.

The B. F. Goodrich Co. has always paid its employees at rates as high or higher on averages than the prevailing rates in the labor market area. As you no doubt know, labor rates paid throughout the rubber industry have for many years exceeded the rates paid in most other industries. According to the Bureau of Labor Statistics reports for October 1946 the average hourly earnings of employees in the rubber-manufacturing industry were \$1.30 per hour as compared with an average of \$1.13 per hour for employees in all manufacturing. B. F. Goodrich employees enjoyed average hourly earnings of \$1.425. It is ironical that the higher the rate of wages paid, the more oppressive on the employer are the provisions of the Fair Labor Standards Act as interpreted by the Supreme Court in the Tennessee Coal, Jewell Ridge, and Mount Clemens Pottery cases.

I am confident that until June 1946, when the Supreme Court handed down its ruling in the Mount Clemens case, very few people in this country had any idea that the Fair Labor Standards Act of 1938 could be stretched by judicial interpretation so as to subject manufacturers to liability for overtime compensation for time consumed in walking, traveling, and other activities preliminary to the commencement of productive work. I cannot believe that Congress in 1938, without expressly defining the term "work," could have intended to change that which had always been understood, by employers and employees alike, to be compensable work or employment.

The recent decision of Judge Picard dismissing the complaint of the employees involved in the Mount Clemens Pottery case, in which I understand that the maximum time consumed by any employee in such preliminary activities was 9.7 minutes, should not be allowed to deter this Congress from depriving the courts of jurisdiction to hear and maintain such portal-to-portal claims, fixing a 1-year statute of limitations for the bringing of suits for all other back-pay claims, validating the bona fide settlement of such claims, and correcting the present uncertainties under the act.

STATEMENT OF CHARLES E. GAMBILL, PRESIDENT, THE GLOBE CO., CHICAGO, ILL.

Senator AIKEN. Mr. Gambill is the next witness. Will you identify yourself for the record?

Mr. GAMBILL. I am Charles E. Gambill, president of the Globe Co., Chicago, Ill.

Senator AIKEN. What is your business—what is the business of the Globe Co., Mr. Gambill?

Mr. GAMBILL. Manufacturers of machinery and equipment for the meat packers, steel tanks for the oil industry, and other contract work; fabrication.

Senator AIKEN. All right; you may proceed with your testimony.

Mr. GAMBILL. The invitation of the committee to appear and express my views is deeply appreciated:

I wish to make two points: (1) No single smaller employer can withstand the determined effort of a union to impose compulsory unionism on the employer; (2) no single smaller employer can withstand the determined effort of a union to obtain unfair and unjust economic concessions from an employer.

Virtually all business people, whether they be engaged in the manufacturing business, the retail business, or any other endeavor which employs capital, feel the same way I do about the points which I wish to stress at this hearing.

Fortunately or unfortunately, so-called business people are not organized as thoroughly and articulately as the so-called labor people, and hence you will not find as many of them from the business side appearing here—even though they are as pronounced in their views as I—to give testimony in favor of a more equal balance of power between capital and labor, as there would appear if this committee were considering a bill to make union membership obligatory and were calling for testimony from the labor side.

The balance of economic power and force has shifted so completely to the side of labor that a single smaller businessman is completely at the mercy of the professional labor leader.

Now that this has happened, it is time for Government to step in and restore a normal balance. If it fails in this duty the result will be: (1) Government itself will be taken over by forces less responsible than any of the forces already in Government; (2) the right of property will disappear; (3) the collectivism of eastern Europe will take the place of democracy.

No responsible person dares to challenge that mankind is better off under a system of government which recognizes and protects the right of any individual to acquire and enjoy property. Those who oppose a restoration of a more even balance of power between those who direct and those who are directed are contributing to the downfall of the very system which has been the boon of every American.

In considering labor legislation we must necessarily consider some of the underlying traits of character of human beings. The psychologists say that the most important motivation in the human being is that of security, the acquisition of food, shelter, and clothing. No one—not even the so-called economic royalists—will deny that all in

a land of plenty should have ample food, clothing, and shelter. But not far down in the line of motivations comes the urge to wield power and to rule. It is this motivation which the existing labor laws have developed to an even greater extent than they have developed a fair state of economic security for the people. The labor laws as presently administered are more for the benefit of the power-wielding labor leader than they are for the benefit of our workers.

As proof of this, we find the industrial world today one that is full of would-be dictators and tyrants concerned only with the sense of satisfaction which comes with leadership over the less fortunate people and with the sense of security which comes with the collection of large sums of money. Over \$23,000,000 are collected each month from the workingmen of this country and paid to unions. The employers are made to act as the collection agency for a large part of this amount through the check-off of dues.

The existing labor laws, while tending to correct an evil which existed in 1935, have created a monster which threatens the security of the Government itself 10 years later. They have developed the traits of character that most people desire to subdue. They are destructive of an orderly society and a happy mankind.

My experiences are ample proof that no single smaller employer can withstand the determined effort of a union to enforce terms of compulsory unionism or unjust economic demands upon such an employer.

The large employers with thousands of employees and ample reserves may, at the hazard of great losses, successfully oppose such demands. The answer is their economic strength, their vast resources, and usually their lack of competition, or, in other words, their economic independence. But even in the case of such large employers, terrific losses can be dealt out to them.

But in the case of the average smaller employer, a strike is a quick way of inviting the unions, the bankers, the sheriff, or one's competitors to take the remains. Either of the four is willing to step in. But it must be said in fairness to the bankers that they do not like to walk into a bad labor situation. Their first reaction is, "Make a deal and get straightened out for the present." They have no particular concern about what is going to happen next year or the following years. It must also be said in favor of the sheriff that he is only doing his duty, a chore which he dislikes when called upon to preserve order during mass picketing. As for the competitors, while sympathizing deeply, they will run off with your customers.

Where does the owner of the smaller business which is unionized fit into this picture? The answer is that he does not. He wonders why under present-day conditions he engages or stays in the enterprise. And after pondering the question, decides that he will plod along and hope that Congress will do something to equalize the situation.

I would like to give you my experience. In 1940 I purchased the Globe Co., which company manufactures machinery and equipment for the meat packers and steel tanks for the oil industry. We employ about 350 men in our shop.

I am most desirous, along with my two sons, of building a permanent and substantial business that can continue to grow and give steady employment to our employees.

The war came along and my company through our engineers developed an expanded hatch beam for Liberty ships which saved the Government a good deal of money because 10 tons of steel per ship were saved. We received the highest award of the Maritime Commission for production records.

I raised wages along with everyone else—in fact, a little out in front of everyone else. From November 1, 1940, to the present my average straight time hourly earnings increased from 70 cents to \$1.24½ per hour, plus incentives which run from 10 percent to 20 percent more.

The Packing House Workers, CIO, organized our plant September 21, 1945. This is the first union we had in our shop.

They shortly thereafter called a strike over a question of incentive rates during the reconversion period when we were the victims of circumstances. It lasted for 7 days and was compromised. On September 21, 1946, the employees decided to affiliate with the steelworkers, CIO. The employees at that time had to be impressed with the influence and power of the steelworkers, so I was requested to sign a contract calling for (1) compulsory unionism and check-off of dues; (2) a 10-cents-per-hour wage increase, even though my wages were then 7 cents above the metal-working average for the Chicago area; (3) increased vacations, even though we were then granting the standard of 1 week for 1 year's service and 2 weeks for 5 years' or more service; (4) two paid rest periods a day; (5) pay for voting on election day; (6) wash-up periods; (7) eight paid holidays at straight time when no work is performed and triple time when the holidays are worked. Only about 8 percent of employers had at that time granted any paid holidays and then never more than six. The union added Roosevelt's birthday and Philip Murray's birthday to the six normal holidays.

The organizer told us that he would go easy if we granted compulsory unionism, or, as he put it, the union shop.

I am firmly opposed to removing the freedom of choice from a single one of my employees. When I protested against these demands they said that they would close our plant down at a moment's notice. This he did on October 10, 1946.

The strike lasted for 25 days. During this interval I paid my office force, salesmen, engineers, and supervisory employees and our other expenses continued. Competitors were each day gaining a big advantage over our concern. My cash was nearing depletion. Our losses were \$43,000. I was obliged to negotiate a larger bank loan and under threat of the organizer to keep me closed for months, I was faced with the stark alternative of surrendering principle on the issue of compulsory unionism and compromising out the other issues on the one hand and closing up shop on the other. On the theory that something would be done by Congress to prevent a recurrence of this unfortunate choice, and because there seemed to be no alternative, I gave in. Each of my shop employees must now join a union, be subject to its rules and dictates, and pay dues and assessments to it in order to continue working for our company. The so-called fringe items, such as paid holidays, increased vacations, wash-up period, and so forth, have added greatly to my costs.

This item, I might say, alone, has cost us \$50,000 a year.

My wages are higher than my competitors. It is more difficult to remain in business and secure a reasonable return on my capital investment. The Government is losing the tax revenue which it would derive from my business if I could make a reasonable profit.

A similar story, I am sure, could be told by thousands of other employers.

The conclusion is inescapable that the smaller employer is totally unable to withstand the unjust demands of labor.

Organized labor will continue to make unjust demands upon the smaller employer because organized labor knows that the smaller employer will succumb and that he has no choice in the matter. Organized labor knows that when it, by force, threats, and intimidation, wrings further concessions from smaller employers that they will be able to use these additional concessions as a base or springboard from which they will attack the larger employers. One only need to witness the concerted campaign by organized labor in the Chicago area to impose compulsory unionism on the smaller employers in the metal-working industry so that armed with a large number of contracts which contain the union-shop or closed-shop provision, they will be able to approach the larger employers and say, "Why should you resist when so many others have gone along with us?" I do not care particularly how the Congress may bring about a more equal division of bargaining power. I do know that it is essential to the continuance of this form of government and to the well-being of this country that it be done promptly and effectively.

I thank you for your kind consideration.

Senator AIKEN. Do you have any questions, Senator Ellender?

Senator ELLENDER. Well, I am just sympathetic with his position; it is an awful situation when things turn out that way.

Senator AIKEN. There being no questions, Mr. Gambill, we thank you for your testimony this afternoon.

Mr. GAMBILL. Thank you, Mr. Chairman.

STATEMENT OF HUGH H. C. WEED, PRESIDENT, CARTER CARBURETOR CO., ST. LOUIS, MO.

Senator AIKEN. The next witness is Mr. Weed.

Mr. WEED. I guess I must be the dessert.

Senator AIKEN. Yes, Mr. Weed; we are rather late in hearing your testimony; it took a little longer than we intended, sir, with some of the other witnesses.

You may proceed with your testimony. Are you going to follow your printed statement?

Mr. WEED. No, sir; it is too long.

Senator AIKEN. You want to go ahead and tell your story and then catch a train?

Mr. WEED. Well, the train is incidental. I do want to tell my story.

Senator AIKEN. All right, sir; you can tell your story.

Mr. WEED. My name is Hugh H. C. Weed. I am a resident of Clayton, Mo., a suburb of St. Louis, Mo.

I am president and general manager of Carter Carburetor Corp., which manufactures automobile carburetors and parts in St. Louis and have been its active head since 1913, when our office force consisted of a stenographer and me.

This statement is submitted to the committee in support of moderate and equitable legislation to eliminate some of the abuses which now exist under present laws and to eliminate some of the outstanding deficiencies in present laws. The points which should be dealt with by legislation follow in the order of their importance, as I see it.

First, let me be clearly understood. I do not subscribe to any policy intended to destroy unions. I do submit, however, that no individual or group should be afforded special privilege. To prevent such special privilege, I believe it imperative that fair and moderate amendments to our laws should be adopted.

My remarks should be considered in light of the fact that Carter Carburetor has dealt in collective bargaining with the UAW-CIO for almost 4 years and that during that time our problems have been solved without a strike, except for the loss of 2 or 3 days by a few employees in 1945.

We are unalterably opposed to any form of compulsory union membership and sincerely urge the adoption of legislation which will prohibit it.

We have followed with considerable interest much of what has been said and written on the subject of prohibiting various forms of compulsory union membership, such as the closed shop, union shop, and maintenance-of-union membership.

I followed with a great deal of interest today Mr. De Mille's testimony. Until he talked today I felt that the most important issue of all had not been raised to any great extent. The real thing at issue is this: What is going to happen to the individual employee who has the real stake here?

Now, our Government stems from the Constitution, and to the Constitution we look for fundamental principles. Most outstanding of those is the fact that the Constitution guarantees freedom to the individual—freedom of religion, freedom of speech and of the press, freedom of assembly, freedom to bear arms, freedom from unreasonable searches and seizures.

While not mentioned specifically, it is not open to debate, I believe, that the individual is likewise guaranteed freedom to work, or not to work, as he shall see fit.

That freedom to work or not to work, as the individual chooses, is fundamental. Anything that curtails it is wrong. Any form of compulsory membership in a union is morally wrong and is a serious breach of the individual liberties of any man or woman. It should be made legally wrong. It is difficult to conceive of any violation of fundamental rights which affects the great majority of our people more vitally than compulsory union membership as a condition to the right of the individual to earn his and his family's livelihood.

No one can justify any society which in one breath says that I am free to worship as and where I please, free to speak or write as I please, subject only to the laws of libel and slander, free to assemble,

and in the same breath says that I am not free to work or not to work as I choose without joining a union or anything else.

It is wrong—fundamentally wrong—to so drastically qualify the right to work.

It has been established by our law that it is wrong even to ask any individual to agree, as a condition of employment that he will not join a union—and rightly so. It is equally wrong to compel any individual, as a condition of employment, to join a union.

Now, may I digress just a moment and say this? I listened with a great deal of interest this morning to Senator Morse's questions to Mr. De Mille. He seemed to feel, if I understood him correctly, that if there were no legal precedents, then there was no way to correct the situation.

Now, I submit to you that there can be no progress if we have just to rest on legal precedent.

I submit also that labor never would have made the gains that it has made up to now if that principle were applied in their case.

I say that, while I have as much respect for the laws of the land as anybody, I do not see how anyone can take the position that precedent is necessary in order to make something right.

This issue of the closed shop is a fundamental issue and if it is regarded in any other way, then I think that we are missing the point.

Senator ELLENDER. I think that what Senator Morse had in mind was simply this: If management or any part of it desires a closed shop, why not let them have it? Why deny it to them?

There is no law on the statute books today that forces you to have a union shop or closed shop. You can do it if you choose to.

Now, if some segments of management desires a closed shop, why outlaw it?

That, I believe, is what Senator Morse said.

Mr. WEED. May I answer that?

Senator ELLENDER. Surely.

Mr. WEED. Bear in mind that the fundamental right is in the individual. I, as a citizen, I, as an individual, am not ready to pass over to some employer, as he may choose, to give away my rights under the Constitution.

The fundamental thing, I say to you, Senator, is the individual, and not anything else. If we get away from that, I think that we are getting away from the essence of the matter.

Senator ELLENDER. Well, if 100 people come to you as an employer and say that they want the closed shop, then you should have the right to ask for it. If they say that they want it and if the employer is willing, why should they not get it?

Mr. WEED. I'll tell you. Because they are not the only people in the world, they are not the only citizens in the country. If you have a closed shop then if any other employees want to get in there, they cannot get in. Their freedom to work is denied.

It is the individual, not some group of individuals and not some employer, that I think is fundamental.

Senator ELLENDER. I do not want to argue the Constitution with you, Mr. Weed.

Mr. WEED. That is my opinion.

So long as our law prohibits compelling an individual to agree not to join a union in order to get a job and fails to prohibit the counterpart—the compelling of an individual to join a union in order to get a job—our laws are one-sided, unjust, and fundamentally wrong. This is special privilege at its worst. I have never heard one valid reason for it.

I wonder if this Congress can rest easily in its own conscience if, by failing to prohibit compulsory membership in unions, it virtually forces many people into labor organizations whose policies, rules, practices, conditions of membership, and internal organization Congress has made no move to regulate so as to protect the individual from arbitrary and whimsical “discipline” or expulsion by the officers.

I am not going to give any examples of that point. Mr. De Mille gave some perfect examples this morning—among others, himself. He was forced out of his livelihood because he would not subscribe to a political fund in which he did not believe.

Fortunately, he had money enough to survive, because he had other interests. But, what about the man who has not? His rights are just as important as the rights of Mr. De Mille, and he has no choice and he has no chance under those circumstances.

Senator ELLENDER. I do not think that any member of the committee is other than sympathetic, but such a situation can be corrected by legislation.

Mr. WEED. It can only be corrected if you outlaw the closed shop, in my opinion.

Senator ELLENDER. I am glad you added that, “in my opinion.”

Mr. WEED. Well, this is all my opinion.

Senator ELLENDER. Yes.

Mr. WEED. In fact, as things now stand, compulsory union membership requires the employee to join a union in some cases but no law compels the union to accept the employee as a member—and some unions do not.

How can you compel membership in an organization as a condition of the right to work—yes; right to eat—without providing safeguards against the refusal to accept for, or the ejection of a worker from, membership possibly for pure whim or caprice of forces within the organization? And what about the great unbalance of economic power that was considered so heinous in the hands of the employer, as recited in the first section of the Wagner Act? Is the situation any different when that tremendous power exists in the union? Of course not.

I say that compulsory membership in any organization is reprehensible and most un-American. I say this is a moral issue comparable to those other issues protected by the Bill of Rights in the Constitution.

It should not be overlooked that compulsory union membership really acquired its impetus as the result of the policy of the National War Labor Board during the war of directing the incorporation of maintenance of membership and check-off clauses in union contracts. It must be remembered likewise that the excuse then given, for what was recognized to be a severe inroad upon the freedom of the individual, was that in time of war unions had agreed not to permit strikes

and in return to the union for surrendering its economic power the Government proposed to afford it security to the extent that its members be compelled to continue their membership during the life of a given collective-bargaining agreement.

As soon as the war was over, the no-strike pledge was withdrawn emphatically. But maintenance of membership lingers on.

If we do not correct this now, it will not be long before there will be no place for any employee to work, who does not subscribe to the tenets or social policies or political activities of unions, without being compelled involuntarily to pay tribute to and to support that in which he does not believe.

This is a moral issue. I cannot believe that Congress is prepared, in the light of the evidence at hand, to permit closing the door on freedom to work.

Certainly the attitude of the workers themselves must be given great weight. I cannot recall ever seeing an independent poll of public opinion which did not show a majority opposed to compulsory union membership. A number of polls have shown a heavy majority opposed—a majority from many walks of life.

According to one of the most recent polls, that of Dr. George Gallup this January, only 8 percent favor the closed shop, only 18 percent favor the union shop, while 66 percent favor open shops, with 8 percent giving no opinion.

It has been said that these polls may not be accurate because those polled do not understand the issue. In this poll each type of shop was carefully explained to the people interviewed.

It was also significant that of union members themselves who were polled only 52 percent favored either closed or union shops, while 41 percent favored the open shop. No matter what one may say about general understanding of the issue, certainly union members understand it and the 41 percent who are willing to accept union membership for its value on an open competitive basis, oppose it on a compulsory basis.

I submit that legislation should be enacted prohibiting any form of compulsory membership to unions within industry engaged in interstate commerce.

I limit it to interstate commerce because I assume that this Congress has authority only over interstate commerce and not over intrastate. The principle, of course, is the same in intrastate commerce.

Now, on the subject of industry-wide bargaining.

There are several types of industry-wide bargaining which I have described in my brief. All of them have this feature: The local employees and the local union are subservient to a national absentee authority.

Thus they deprive the individual of his right to have effective voice in matters that directly and vitally affect his life. This is exactly the same moral issue raised by the closed shop.

Let's stick to fundamentals, to the effect of industry-wide bargaining on the rights of the individual.

In virtually every plant that has a union any employee in the local has access to the representatives or officers of the local union. He can

attend meetings of the local union and express his views to his fellow workers and to his bargaining representatives on matters of importance to him in his work.

Of course, as Mr. De Mille pointed out this morning, he may, if it is a closed shop, lose his job and the chances of getting another job by expressing his opinion.

The individual is an individual in his local union. The problems, interests, and living conditions are mutual to him and his fellow workers. In bargaining he understands the conditions he is bargaining about, and he knows his employer.

In one company in which I am a stockholder they tell me that the interests and desires of employees performing similar types of work in widely scattered plants engaged in the manufacture of similar products vary greatly. In three different plants of this company the employees wanted and obtained vastly different seniority provisions in their contracts. One provides for plant-wide seniority, another for departmental seniority, and a third for job seniority. The employees of one plant owned by a subsidiary of this company have requested and have been granted a holiday on the first day of the small-game season. This plant, of course, is located in a rural area. No such request has been made at other plants of this company.

The employees in one plant negotiated time and one-half on Saturday as such except in weeks in which holidays occur, when Saturday is considered a regular workday and paid for at straight time. Other contracts of this company require time and one-half on Saturday whether or not a holiday falls within the workweek. These provisions, directly opposed to one another, arise because the plant permitting work on Saturday at straight time is located in a small community where the employees want at least 5 days' work every week. Employees in other communities seem to prefer to sacrifice a day's pay rather than work on Saturday.

Naturally, what I have given you are only a few examples; they could be greatly multiplied.

Thus the wishes of employees in different localities vary considerably. So long as collective bargaining is conducted on a local basis, these employees obtain terms of employment of their own choosing. It keeps the relationship human, intimate, soluble.

Industry-wide bargaining compels employees to accept conditions not in accord with their wishes and makes the relationship distant, rigid, and much less soluble.

Far more important—most important of all—it destroys the freedom of the employee in a local plant. He has little voice in, and virtually no opportunity to express his personal views on, the terms of a labor agreement under which he must work. His freedom is gone.

Secondly, industry-wide bargaining tends to destroy the economic security of many rural areas. In many small communities will be found one establishment of a large company. The rural plant supports these communities—the local bank, stores, and transportation companies.

Certain basic costs are greater in these rural plants. A substantial one is in-bound and out-bound freight. For example, take any heavy

commodity made of steel. The cost of transporting steel, which constitutes most of its material, is from certain basing points. In some metropolitan areas the freight is relatively nominal—say 5 cents per hundred pounds—whereas in rural areas it may run as high as 34 cents per hundred pounds. That means as much as \$130 on a freight car for instance. Thus, rural plants must pay a very substantial additional cost in delivered raw material. But the cost of living there is less, which justifies an offsetting differential in wages.

Now comes industry-wide bargaining demanding that the historical differential in wages be abolished. The rural plant cannot continue under such circumstances, thus throwing men out of work and disrupting the economic security of such rural communities.

Now, that is not theory. I know a plant over in Pennsylvania that, for many years, helped to support the community in which it was located. That plant is out of business now for just that very reason.

Thirdly, industry-wide bargaining tends to eliminate small business. The small business generally lacks the working capital or mechanical equipment of many larger industries. On the other hand, it frequently offers more rapid advancement to the employees than large business does, and a better opportunity to learn the business. These advantages justify a lower base wage, which is accepted by employees for the above reasons. Industry-wide bargaining destroys such opportunities when it forces the industry-wide pattern upon the small business.

I felt so strongly about that, that when my son came to go into business I recommended that he go into a little business.

The reason I did that was that I feel, in a little business which is a good one but which is a small one, a man can learn as much in a year as he will learn in many years—sometimes 5, 6, or even 10 years—in a big, departmentalized business. I feel that these advantages justify a lower basic wage and that it will be accepted by the employees for that reason and the above reasons.

Furthermore, small businesses very often adopt types of incentive plans which produce even greater earnings for the employees in that small industry, in spite of the lower base rate, than are afforded in the big industry.

Fourthly, industry-wide bargaining may impair our national defense. We have heard a great deal recently about decentralizing industry to scatter the risk in case of attack with modern weapons of war. For the reasons outlined above, industry-wide bargaining, by tending to eliminate rural plants and the opportunity of the small business to survive, in effect will drive industry into metropolitan area, which is directly opposed to the desired decentralization of industries.

Fifthly, and most important, industry-wide bargaining has created monopoly and excessive power in the hands of a few national labor leaders. Experience with the big unions in the past year make my point a truism requiring little argument. We have seen national union leaders endeavoring to deliver the vote of the union membership in political campaigns. One man was able to completely shut off

one of the principal supplies of fuel endangering our industrial and economic structure and the very health and lives of the people. This would be impossible without industry-wide bargaining.

There is no greater peril to the workers themselves as well as the general public than industry-wide bargaining. We recommend that this Congress adopt legislation which will effectively prohibit the continuation or enlargement of this practice.

I have particularly emphasized the prohibition of compulsory union membership and industry-wide bargaining, because I firmly believe that these two phases of the labor problem are basic menaces to a healthy economy. They strike at the basic freedom of the individual. I believe a majority of the individual employees are vigorously opposed to these practices for that reason.

In order to protect freedom of action to the individual employee as guaranteed by the Constitution of the United States we, therefore, urge that Congress not only prohibit compulsory union membership and industry-wide bargaining but also that: (a) unions be made legal entities subject to suit; (b) unions be made to account to Government and membership for the use of union funds; (c) unions be made subject to the antitrust laws and the exemption on behalf of union officials in the Norris-LaGuardia Act be eliminated; (d) unions be subject to Federal injunction against mass picketing, intimidation or violence; (e) any individual union member be given the right to sue the union for lost wages and liquidated damages (1) if he is forced to strike without a majority vote of all employees in the unit, conducted by secret, supervised ballot taken at the plant of the employer or at a nearby neutral point, or (2) if he is forced to quit his job by threat, intimidation, coercion, force, or bodily harm (including the right to recover for personal injury and property damage).

I should like to cite you an example that I cut out of the newspaper today. This is from the Times-Herald of February 14, 1947, from the column entitled, "These Days," by George E. Sokolsky.

I received this letter from a worker in Pittsburgh whose name and address I am withholding for his safety, for should he be expelled from his union, he could not exercise his right to work at his trade.

"I have often wondered just how much you big well-known writers were interested, really and truly interested, in the plight of an unknown individual who wants to work daily, every working day, from whistle to whistle.

"So let us take my case. I think it is typical because I know hundreds of men with whom I work and we are all in the same boat. I am unknown. I am a nobody. I work in one of the mills belonging to the United States Steel Corp.

"I have worked there for years. I know my job and I do it to the satisfaction of all concerned. I am a union man and attend nearly all the meetings of my local. I hold no office.

"Just about a year ago Phil Murray called us out on strike. My hourly rate then, before the strike, was 92½ cents. As you recall, the company offered a raise of 15½ cents an hour. But that did not suit Mr. Phil Murray so out we went.

"I lost nearly 5 weeks of work. I did my share of picket duty. There was no money of any kind for picket duty, strike pay or anything.

"We went back to work. The strike was settled for a raise of 18½ cents per hour. Actually we were striking for a difference of 3 cents an hour, 24 cents a day, \$1.20 a week, or a total of \$6 for the 5 weeks. Silly, wasn't it?

"We used to discuss it while doing picket duty. I went back to work February 20, 1946. From then on it has been 'in and out.' The coal strike and the Pittsburgh power strike caused more shut-downs. In all, I lost 63 working days last year due to labor trouble.

"My total earnings in 1945 were \$2,305.98. My total earnings in 1946 were \$1,729.73. My raise cost me \$576.25. That is what this union labor racket cost me.

"Were you in my place, how would you feel? I cannot afford another raise. I speak only for myself but I do know how many more feel about this. How do you suppose I voted November 5, 1946? How do you suppose hundreds of thousands of my fellow workers voted? We had enough. Yes, sir; enough.

"Now the question is: What is the Congress going to do about it? Are the master minds in Washington going to continue to listen to Phil Murray, Bill Green, John L. Lewis, and the rest of the social parasites? Or are they going to be guided by the results of November 5, 1946, and do something about it?

"Are they going to bust up this labor monopoly and labor dictatorship and restore the rights of an American citizen to a person who must work in order to live? Fire is a good servant but a poor master. That goes for labor unions, too.

"There is one simple little thing which, if done, will clear up this labor situation in not more than 90 days. Make illegal the closed shop, the check-off, and the maintenance of membership clause in all contracts.

"You need not worry about anything else. The voluntary membership of the unions would soon clean house. Make labor unions subject to the same laws as corporations—combinations in restraint of trade—income taxes—publish financial statements—campaign contributions, etc. Of course Phil and Bill and John will not like this but millions of other Americans will.

"And that, Mr. Sokolsky, is how I feel. I not only hope but I pray that something is done. I do not want to put in another year similar to last year. That was bad. That was bad for everyone except those in one the labor racket.

"Now what do you think?"

This letter tells the story better than I have seen it anywhere else by any "big, well-known writer."

Now, there are a number of other points that I had in my brief. They have been well covered by other speakers. I have in mind now the patience of this committee on this long day, in hearing these other witnesses. I am not going to go into them.

I wish, however, to say one thing.

The other day, in talking to a distinguished member of this committee, I was talking about the abridgment of free speech by the Wagner Act.

Now, he expressed the opinion that the recent decisions of the Supreme Court had pretty well cleared that matter up. He mentioned to me the fact that Fred Crawford, who is president of the Thompson Products Co., of Cleveland, had in spite of the restriction on free speech in the Wagner Act, kept himself going pretty well.

So, I called up Fred Crawford yesterday to find out what his situation was and what had happened to him, and here is what he told me.

He said that during the war and afterwards national unions had been trying to organize his plant and that the employees wanted none of them. "I took it upon myself to express myself about the issues in a forthright way" he said.

They called five elections to determine who would represent the employees during these years, and five times the national unions were turned down by employees at the Cleveland plant. The ballots said "AFL, CIO, or nothing," and they voted "nothing" every time and on one of them they voted the national unions down 5 to 1. After each election the National Labor Relations Board, because Crawford had expressed himself openly and frankly, threw the election out, and they started all over again.

Then, the National Labor Relations Board took him into the circuit court asking an injunction against Crawford's freedom of speech.

When it was over the judge said, "What Crawford said to his men was not only quite proper but good, sound Americanism."

Then, what happened? Even after that rebuke from the court, the National Labor Relations Board threw out that election, too.

Now, gentlemen, I submit that this issue of free speech is a serious thing still. There are still severe restrictions put upon management's free speech by the Wagner Act even in spite of the Supreme Court's decisions—which have certainly made free speech freer than it was right after the act was passed. If a man as forthright, as able, as articulate, and as pugnacious as Fred Crawford, has to spend much of his time for 5 years in order to protect his freedom of speech under the Constitution and then, every result that is achieved is thrown out, what chance has the ordinary man?

Now, that, to me, is black beauracracy at its worst; that is law being made by somebody besides the representatives elected by the people.

Senator BALL. That makes it pretty tough for a small businessman who does not have the resources that Mr. Crawford had.

Mr. WEED. It makes it so tough that he cannot exist, as the gentleman who preceded me testified. Naturally, I agree with what Mr. Graham said about the organization of supervisors and the other matters that he discussed, such as jurisdictional strikes, sympathy strikes, and secondary boycotts and contributions by employers to the union.

Now, Senators, I feel that I have tested the patience of this committee to an end; I have tested it long enough and I will rest there.

The CHAIRMAN. Thank you, Mr. Weed.

Are there any questions?

(No response.)

The CHAIRMAN. I am sorry that I was not here. Senator Ball and I have cut \$6,000,000,000 off the budget and we could not come down here. We had to stay there until it was done.

Mr. WEED. Well, if you got that much off, I am glad you were not here.

The CHAIRMAN. Thank you for your testimony, Mr. Weed. Your brief will be made a part of the record.

(Prepared statement by Mr. Weed is as follows:)

STATEMENT OF HUGH H. C. WEED TO THE COMMITTEE ON LABOR AND PUBLIC WELFARE
OF THE UNITED STATES SENATE

My name is Hugh H. C. Weed. I am a resident of Clayton, Mo., a suburb of St. Louis, Mo.

I am president and general manager of Carter Carburetor Corp., which manufactures automobile carburetors and parts in St. Louis, and have been its active head since 1913 when our office force consisted of a stenographer and me.

This statement is submitted to the committee in support of moderate and equitable legislation to eliminate some of the abuses which now exist under present laws and to eliminate some of the outstanding deficiencies in present laws. The points which should be dealt with by legislation follow in the order of their importance, as I see it.

First, let me be clearly understood. I do not subscribe to any policy intended to destroy unions. I do submit, however, that no individual or group should be afforded special privilege. To prevent such privilege, I believe it imperative that fair and moderate amendments to our laws should be adopted.

My remarks should be considered in light of the fact that Carter Carburetor has dealt in collective bargaining with the UAW-CIO for almost 4 years and that during that time our problems have been solved without a strike, except for the loss of 2 or 3 days by a few employees in 1945.

ON COMPULSORY UNION MEMBERSHIP

We are unalterably opposed to any form of compulsory union membership and sincerely urge the adoption of legislation which will prohibit it.

We have followed with considerable interest much of what has been said and written on the subject of prohibiting various forms of compulsory union membership, such as the closed shop, union shop, and maintenance of union membership. I am forced to ask "Has everyone forgotten the individual who has the real stake in this issue?"

Proponents and opponents of currently proposed legislation on labor matters, for the most part, seem to have missed the fundamentals involved.

Too often the issue is couched in terms of corporations versus unions.

The individual employee—the man most vitally concerned—thus seems to be relegated to the status of a shuttlecock!

The sound approach to any labor legislation must be with not one, but both eyes on the individual, particularly the individual employee, without losing sight of the employer who is an individual, too.

Our form of government stems, basically, from our Constitution. To that document we look for fundamental principles. Most outstanding is the fact that the Constitution guarantees freedom of the individual; freedom of religion; freedom of speech and of the press; freedom of peaceable assembly; freedom to bear arms; freedom from unreasonable searches and seizures.

While not mentioned specifically, it is not open to debate, I believe, that the individual is likewise guaranteed freedom to work, or not to work, as he shall see fit.

That freedom to work or not to work, as the individual chooses, is fundamental. Anything that curtails it is wrong. Any form of compulsory membership in a union is morally wrong and is a serious breach of the individual liberties of any man or woman. It should be made legally wrong. It is difficult to conceive of any violation of fundamental rights which affects the great majority of our people more vitally than compulsory union membership as a condition to the right of the individual to earn his and his family's livelihood.

No one can justify any society which in one breath says that I am free to worship as and where I please, free to speak or write as I please (subject only to the laws of libel and slander), free to assemble—and in the same breath says that I am not free to work or not to work as I choose without joining a union, or anything else.

It is wrong—fundamentally wrong—to so drastically qualify the right to work! It has been established by our law that it is wrong even to ask any individual to agree, as a condition of employment, that he will not join a union—and rightly so. It is equally wrong to compel any individual, as a condition of employment, to join a union.

So long as our law prohibits the compelling of an individual to agree not to join a union in order to get a job and fails to prohibit the counterpart—the compelling of an individual to join a union in order to get a job—our laws are lopsided, unjust, and fundamentally wrong.

Such inequitable treatment has no place in our country.

What sound justification is there for attaching any such condition to the very right to live? I have heard none. There have been excuses—but I never heard one that holds water.

The most frequent excuse is that any individual who works among a group which a union represents should be compelled to share the expense of such representation. Well, why?

Is anyone compelled to share the expense of any religious organization in which he may participate? Of course not—even though he actually and voluntarily is a member of that group.

Is anyone compelled to share the expense of any political party in which he may participate? Of course not—even though he actually and voluntarily is an enrolled member of that party.

I can think of no circumstance wherein any individual is compelled to share the expense of any group except certain groups which he may voluntarily join—such as a club or fraternal organization—and he may withdraw from those whenever he chooses.

Obviously, there can be no justification for singling out one form of association—unions—and compelling membership therein as a condition of earning one's livelihood.

In fact, if you analyze any such suggestion does it not imply that membership in unions cannot be justified purely on the merits of the unions' aims and accomplishments? Every other form of association—including religious groups—acquires and retains its membership solely on the basis of the merits of its aims and accomplishments.

The truth of the matter is that the attempt to justify the violation of the individual's right to work or not to work without restriction is based on a false premise. It is an age-old trick of logic to devise a clever and at first blush appealing premise upon which to base an otherwise unpalatable conclusion. Those who attempt to justify compulsory union membership on the ground that all individuals should share the expense of the union's activities are—whether consciously or unconsciously I do not know—employing that trick and drawing attention away from the true fundamentals.

Analysis of this tricky reasoning reveals two false premises.

First, it is based upon the premise that all resistance to union membership is based solely on a desire to avoid paying a dollar or so a month in dues. This is a cleverly devised fallacy designed to appeal to the rather general human trait to be unsympathetic to the man who will not pay his way. This premise is demonstrably false.

Second, the tricky reasoning is based upon the premise that every individual has received benefits from the union's activity for which he should pay tribute. This too is false. Consider these facts:

(a) During the war period, when earnings of the worker reached the highest level in our history, a great number steadfastly resisted union membership, although they spent their dollars freely. Clearly, something more than a dollar a month accounted for the resistance. What was it? It must have been principle—opposition to compulsion; personal conviction that the union's policies were wrong and did not advance the true interest of the employees; disagreement with the tenet of some unions that advancement and promotion should be based solely on seniority to the exclusion of other factors, such as skill, ability, productivity, efficiency, personal attitude toward his job as evidenced by such things as regular attendance, careful attention to instructions, demeanor, ability to get along with fellow workers, teamwork, interest in work, respect for those he works for and with, safety habits, promptness, reliability, steady work without loafing, and so on.

(b) Some employees have paid their tribute and still refuse to join the union. Only recently one of our employees pointed out that, perhaps inadvertently, in the list of names the union regularly submits as union members from whose pay union dues should be deducted, the union included the names of employees who claim they are not members and that a number of these employees have not protested the deductions for the stated reason that they do not care to become involved in a dispute with the union. Here, certainly, resistance to union membership is not based on the cost of membership. They are paying the dues. It must be based on principle.

(c) The price of resistance to continuous attempts by fellow workers to "sign up" the nonmember must far exceed a mere dollar or so per month in dues. While we understand from reports that some unions employ severe coercive and intimidating measures to "persuade" nonmembers to join, let us consider only the situation of the nonmember who is solicited without threat or violence. We all know that it takes a stout individual to resist over a period of years persistent (even though legitimate) solicitation accompanied as it often is by an unfriendly attitude on the part of some fellow employees which frequently accumulates and magnifies as time goes on. Is it not a difficult stretch of the imagination to assume that resistance under such circumstances is due entirely to saving a dollar or so a month? Obviously, the man's principles must be the true cause.

(d) Nor can it be assumed that all employees benefit from union activity. Employees in many cases, I am sure, resist membership because the policies

of a particular union are not, in his opinion, beneficial. Certainly, it must be true that many employees recognized that the strife of 1946 resulting from the demand for 30 cents per hour increases by some unions could result only in increased prices and living costs, especially in those cases wherein the original basis for the demand—a return to a 40-hour week—did not exist. Likewise, the skilled and efficient worker dislikes the policies of some unions (1) to treat seniority above all else as the basis for advancement and promotion, (2) to raise the level of the unskilled and semiskilled mass of employees disproportionately to that of the expert technician in an arduous craft, (3) to discourage efficiency and productivity of the above-average worker in order to prevent the focusing of attention on the inefficiency of the subnormal worker, (4) to sponsor social policies and virtually force support of political policies and candidates with which the individual disagrees, (5) to advocate conditions of employment sponsored by union national headquarters without regard to the detrimental effect such conditions may have upon the employee in light of circumstances existing at a given place of employment, (6) to oppose reasonable, just discipline meted out to employees who deserve discipline, and thus tend to prejudice the safety, health, earning capacity, or opportunity of other employees to work.

I wonder if this Congress can rest easily in its own conscience if, by failing to prohibit compulsory membership in unions, it virtually forces many of our people into membership in labor organizations the policies, rules, practices, conditions, of membership, and internal organization of which Congress has made no move to regulate so as to protect the individual from arbitrary and whimsical "discipline" or expulsion by the officers?

In fact, as things now stand, compulsory union membership requires the employee to join a union but no law compels the union to accept the employee as a member—and some unions do not.

How can you compel membership in an organization as a condition of the right to work—yes, right to eat—without knowing the danger of or providing safeguards against the refusal to accept for, or the ejection of a worker from, membership for possibly pure whim or caprice of forces within the organization? When any such action requires the employer to discharge the employee without any right to question the justice of the expulsion, can there be any more drastic servitude imposed on any one? Again what about the general unbalance of economic power that was considered so heinous in the hands of the employer as recited in the first section of the Wagner Act? Is the situation any different when that tremendous, enslaving power exists in the union? Of course not.

I say that compulsory membership in any organization is reprehensible and most un-American. I say this is a moral issue comparable to those other issues protected by the bill of rights in the Constitution.

Again, let me be clearly understood. I am not opposed to unions, and I do not intend that what I have said should be considered as applicable to all unions. What is important is that it is applicable to some and so long as the condition exists, it is wrong to permit compulsory membership.

I wish to call attention to a striking inconsistency on the part of many of the supporters of a closed shop. It should be remembered that they have cried to the housetops about the inviolable right of the individual to work for whomsoever and wherever he wishes without regard to his race, creed, color, or national origin. They have repeatedly demanded that this inviolable freedom of the individual to work be protected by adoption of a Fair Employment Practices Act with objectives similar to those of the President's Fair Employment Practices Committee.

Yet those same persons who claim to be so conscious of freedom of the individual to work are among the most active supporters of compulsory union membership.

Does not their position on the fair employment issue well illustrate that compulsory union membership is indefensible? Clearly, protection in the freedom to work regardless of race, creed, color, or origin is no more essential than protection regardless of union affiliation.

In conclusion I feel that it should not be overlooked that compulsory union membership really acquired its impetus as the result of the policy of the National War Labor Board during the war of directing the incorporation of maintenance of membership and check-off clauses in union contracts. It must be remembered likewise that the excuse then given for what was recognized to be a severe

inroad upon the freedom of the individual, was that in time of war, unions had agreed not to permit strikes and in return to the union for surrendering its economic power, the Government proposed to afford it security to the extent that its membership be compelled to continue their membership during the life of a given collective-bargaining agreement.

As soon as the war was over, the no-strike pledge was withdrawn emphatically. But maintenance of membership lingers on.

According to the Bureau of Labor Statistics the point has now been reached where over 70 percent of the employees now covered by collective-bargaining agreements are compelled to maintain their membership in a union. This fact deserves very careful consideration: While it was just as wrong during the years preceding the war to compel membership in a union as a condition of employment, the practical side is that the number of employers who were saddled with one form or another of compulsory union membership were relatively few. We have now reached the point, however, as the statistics clearly show, where we must decide whether this country shall require every workman as a condition of employment to be a member of a union or to restore the freedom of the individual to work or not to work where he pleases and the freedom of association which our form of government up to this time has guaranteed. If we do not correct this now, it will not be long before there will be no place for any individual, who does not subscribe to the tenets or social policies or political activities of unions, to work without being compelled involuntarily to pay tribute and support that in which he does not believe. This is a moral issue.

I cannot believe that Congress is prepared at this time, in the light of the evidence at hand, to permit the closing of the door to freedom to work.

Certainly the attitude of the workers, including union members themselves, must be given great weight. While many people are inclined to minimize the accuracy of polls of public opinion, we cannot escape the fact, whether we like it or not, that certain polls have been remarkably accurate. Even more significant, on the question of compulsory union membership I cannot recall ever seeing any independent poll which did not show a majority opposed to compulsory union membership. I do recall that there have been a number of polls which have shown a heavy majority opposed—a majority from many walks of life.

According to one of the most recent polls, that of Dr. George Gallup, director of the American Institute of Public Opinion, only 8 percent favor the closed shop, only 18 percent favor the union shop, while 66 percent favor open shops, with 8 percent giving no opinion.

It has been said that these polls may not be accurate because those polled do not understand the issue. It is significant that in this poll each type of shop was carefully explained to the people interviewed. The explanation was perfectly clear.

It was also significant that of union members themselves who were polled only 52 percent favored either closed or union shops, while 41 percent favored open shops. No matter what one may say about the understanding of the issue, certainly union members understand it and the 41 percent who are willing to accept union membership for its value on an open, competitive basis, oppose it on a compulsory basis.

I submit that legislation should be enacted prohibiting incorporation of any form of compulsory membership in unions within industry engaged in interstate commerce.

ON INDUSTRY-WIDE BARGAINING

A definition of "industry-wide bargaining" is perhaps as illusive—and rightly so—as a definition of "due process of law."

Industry-wide bargaining occurs in several forms. Perhaps the most commonly recognized form is that type which exists in the coal industry where the individual employers themselves do not participate directly in the bargaining and the employees (including their local representatives for that matter) do not participate in the bargaining themselves. In that case representatives of, or an association representing, the coal industry and representatives of a national union conduct the bargaining.

Another form of industry-wide bargaining we have seen in the steel industry. To some extent that bargaining resembles the type of industry-wide bargaining

that exists in the coal industry in that the national representatives of the steel union bargain with the representatives of a group of steel companies but not with all companies in the steel industry. Here there is an added feature. In recent years we have seen the steel union fight its economic battles with the major steel companies and then through national control of local unions throughout the country in not only steel but other types of industry, enforce the terms reached with the steel companies upon the innumerable smaller and dissimilar industries.

And then there is a third type of industry-wide bargaining which is exemplified by the practices of the automobile workers' union. In this type there has been adopted by the union some phases of the second type of industry-wide bargaining mentioned above. The distinguishing factor here is that representatives of the national union and some representatives together with top management of a large automobile company agree on a master contract with terms and conditions applicable to all plants numbering, in one case at least, nearly a hundred scattered throughout the country. The union then attempts to make this the pattern on which all companies represented by that union are required to settle.

All these types mentioned are objectionable and should be effectively prohibited because they (1) deprive the individual employee of his right to effective voice on matters so directly affecting his life, (2) tend to destroy the economic security of many rural areas, (3) tend to eliminate small business, (4) indirectly impair our national defense, and (5) create monopoly in the form of excessive power in a few national labor leaders.

Because I wish to approach this subject on the basis of fundamentals, I have listed as the first reason to prohibit industry, the effect it has on the individual. Again it seems uppermost that the individual's freedom to work and freedom of association must prevail.

In virtually every plant that has a union any employee in the local has access to the representatives or officers of the local union. He can attend meetings of the local union and express his views to his fellow workers and to his bargaining representatives on matters of importance to him in his work.

The individual is an individual in his local union. The problems, interests, and living conditions are mutual to him and his fellow workers. In bargaining he understands the conditions he is bargaining about.

In one company in which I am a stockholder they tell me that the interests and desires of employees performing similar types of work in widely scattered plants engaged in the manufacture of similar products vary greatly. In three different plants of this company, the employees wanted and obtained vastly different seniority provisions in their contract. One provides for plant-wide seniority, another for departmental seniority and a third for job seniority. The employees of one plant owned by a subsidiary of this company have requested and have been granted a holiday on the "first day of small game season." This plant is located in a rural area. The employees at this plant preferred this holiday because of local interests. No such request has been made at other plants of this company.

The employees of this company in one plant negotiated time and one-half on Saturday as such except in weeks in which holidays occur, when Saturday is considered a regular work day and paid for at straight time. Other contracts of this company require time and one-half on Saturday whether or not a holiday falls within the workweek. These provisions directly opposed to one another arise because the plant permitting work on Saturday at straight time is located in a small community where the employees desire at least 5 days' work every week. Employees in other communities, principally metropolitan areas seem to prefer to sacrifice a day's pay rather than work on Saturday.

Thus the interests and wishes of employees in different localities vary considerably. So long as collective bargaining is conducted on a local basis, these employees obtain terms of employment of their own choosing. It keeps the relationship human, intimate, soluble.

Industry-wide bargaining compels employees to accept conditions not in accord with their wishes and makes the relationship distant, rigid, and much less soluble.

Far more important, it destroys the freedom of the employee in a local plant. He has little voice in, and virtually no opportunity to express his personal views on, the terms of a labor agreement under which he must work. His freedom is gone.

Secondly, industry-wide bargaining tends to destroy the economic security of many rural areas. There now exists in many small communities one establishment of a large company. Such local industries create concentration of inhabitants more or less proportionate to the employment needs of the rural plant. The rural plant supports these small communities, the local bank, stores, and transportation companies.

Certain basic costs are greater in these rural plants. A substantial one is in-bound and out-bound freight. For example, take any heavy commodity made of steel. The cost of transporting steel which constitutes most of its material is from certain basing points. In some metropolitan areas, the freight is relatively nominal—say 5 cents per 100 pounds—whereas in rural areas it may run as high as 34 cents per 100 pounds. Thus rural plants must pay substantial additional cost in delivered raw material. But the cost of living there is less which justifies a differential in wages.

Now comes industry-wide bargaining demanding that the historical differential in wages be abolished. The rural plant cannot continue under such circumstances, thus throwing men out of work and disrupting the economic security of such rural communities.

Thirdly, industry-wide bargaining tends to eliminate small business. The small business generally lacks the working capital or mechanical equipment of many larger industries. On the other hand it frequently offers more rapid advancement to the employees than large business does, and a better opportunity to learn the business. These advantages justify a lower base wage which is accepted by employees for the above reasons. The same small business frequently adopts a type of incentive plan which produces even greater earnings for its employees in spite of a lower base rate. Industry-wide bargaining destroys this opportunity for high earnings through special incentives when it forces the industry-wide pattern upon the small business.

Fourthly, industry-wide bargaining may impair our national defense. We have heard a great deal recently about decentralizing industry to scatter the risk in case of attack with modern weapons of war. For the reasons outlined above, industry-wide bargaining, by tending to eliminate rural plants and the opportunity of the small business to survive, in effect drives industry into metropolitan areas which is directly opposed to the desired decentralization of industries.

Fifthly, and most important, industry-wide bargaining has created monopoly and excessive power in the hands of a few national labor leaders. Experience with the huge unions in the past year virtually makes my point a truism requiring little argument. We have seen national union leaders endeavoring to deliver the vote of the union membership in political campaigns. One man was able to completely shut off one of the principal supplies of fuel endangering our industrial and economic structure and the very health and lives of the people. This would be impossible without industry-wide bargaining. Consider the terrible consequences that would flow from an industry-wide shut down of power or of cutting off other types of services or commodities on which large segments of the population depend.

There is no greater peril to the workers themselves as well as the general public than industry-wide bargaining. We recommend that this Congress adopt legislation which will effectively prohibit the continuation or enlargement of this practice.

I have particularly emphasized the prohibition of compulsory union membership and industry-wide bargaining, because I firmly believe that these two phases of the labor problem are basic menaces to a healthy economy. They strike at the basic freedom of the individual. I believe a majority of the individual employees are vigorously opposed to these practices for that reason.

In order to protect freedom of action to the individual employee as guaranteed by the Constitution of the United States we, therefore, urge that Congress not only prohibit compulsory union membership and industry-wide bargaining but also that:

- (a) unions be made legal entities subject to suit;
- (b) unions be made to account to government and membership for the use of union funds;
- (c) unions be made subject to the antitrust laws and the exemption on behalf of union officials in the Norris-LaGuardia Act be eliminated;
- (d) unions be subject to Federal injunction against mass picketing, intimidation or violence;

(e) any individual union member be given the right to sue the union for lost wages and liquidated damages

(1) if he is forced to strike without a majority vote of all employees in the unit, conducted by secret, supervised ballot taken at the plant of the employer or at a nearby neutral point, or

(2) if he is forced to quit his job by threat, intimidation, coercion, force or bodily harm (including the right to recover for personal injury and property damage).

ON OTHER POINTS

There are other matters on which legislation is appropriate but, with one exception, I feel that these other matters are so over-shadowed in importance by the problems of compulsory union membership and industry-wide bargaining that I shall merely mention some of these problems and state my views without comment. The one exception is the matter of the organization of supervisors under the Wagner Act. The exclusion of supervisors from the scope of the Wagner Act is a necessity since the act holds the employer responsible for what they do and this cannot be done if they have other loyalties. However, the arguments which have been presented to the Congress on this issue seem to have demonstrated that supervisory employees, confidential employees, inspectors and guards, all of whom stand in a peculiarly confidential relation to the employer, should be excluded from the definition of employees in the Wagner Act. In this connection I heartily endorse such provisions in Senate bill 55.

By way of summary the following subjects should be dealt with by appropriate legislation.

Jurisdictional strikes, sympathetic strikes, secondary boycotts should be prohibited. Any union participating in such activities should suffer loss of its status as a labor organization under the Wagner Act and be responsible in damages to those injured.

Management should be afforded equal rights with unions under the Wagner Act including the right to petition for an election to determine the bargaining agent, freedom of speech so long as there is no coercion or intimidation, and the right to file a charge of unfair labor practice for violation of the Wagner Act by any person, including union representatives, particularly in case of refusal by employees or the union to bargain.

No employer should be permitted to check off union dues except upon presentation of a written request signed by the employee involved, and clearly providing that the request is revocable at the employee's option.

Finally we are strongly opposed to the payment by any employer of any money into union funds or to any jointly administered fund. This does not mean that we are opposed to group insurance and similar benefits which we have had for many years but I see no reason for the payment of any sums into union funds or so-called jointly administered funds in order to accomplish that result. I urge legislation prohibiting such payments.

Let me say in closing that by dealing summarily with the various subjects mentioned in the last portion of this statement, I do not intend to minimize the importance of those subjects. I feel, however, that they have already been dealt with effectively by others and that there is such a paramount moral issue involved in compulsory union membership and industry-wide bargaining, that I preferred to devote most of my time to the reasons why such un-American practices should be prohibited.

The CHAIRMAN. Since there are no further witnesses for today, the committee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 5 p. m., the committee adjourned until Saturday, February 15, 1947, at 10 a. m.)

LABOR RELATIONS PROGRAM

SATURDAY, FEBRUARY 15, 1947

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D. C.

The committee was called to order at 10 a. m., in the caucus room, Senate Office Building, by Senator Robert A. Taft, chairman.

Present: Senators Taft (chairman), Ball, Thomas, and Ellender.

The CHAIRMAN. The committee will come to order. Our first witness this morning is Mr. S. M. Cooper of the Fafnir Bearing Co., New Britain, Conn. You may proceed, Mr. Cooper.

STATEMENT OF S. M. COOPER, EXECUTIVE VICE PRESIDENT, FAFNIR BEARING CO., NEW BRITAIN, CONN.

MR. COOPER. Mr. Chairman and gentlemen, my name is S. M. Cooper. I am executive vice president of the Fafnir Bearing Co., New Britain, Conn. I am testifying at the request of the committee, not at my own request.

We employ 3,500 people in the manufacture of ball bearings, typical of the thousands of independent, locally owned, small city manufacturers who have been trying to carry out their business of providing jobs and producing goods, and to ask only that they be free to do so under the laws of the land.

My own experience in the labor relations field includes 4 years as chief executive of my company in negotiations with the UAW-CIO, during which time we have had most varieties of labor problems and difficulties, including a 9 weeks' strike, and 1 year as industry member of the Boston Regional War Labor Board. I am at present a member of the industrial relations committee of the Manufacturers' Association of Connecticut, a member of one of the NAM labor committees, and a member of the advisory council of Yale University Labor and Management Center.

While in this brief and in my statement to the committee I am speaking only for myself, I feel sure that thousands of managers of medium-sized companies like mine would agree with these recommendations. They would particularly agree with that part that pertains to industry-wide bargaining, because they, like myself, are fighting monopoly of any kind, and during the last 5 years the fight against labor monopoly has occupied much, too much, of our time.

In this verbal statement I am going to read in part from my brief, which is general, and then intersperse additional observations from

my own experience. I shall endeavor to limit my statement to the allotted 15 minutes, however.

In considering the very complicated problem of labor relations and of labor legislation, it may be helpful to the Congress, and is almost essential for a sound solution, to distinguish between the duty of Congress in this matter as it pertains to (1) the interests of the country, and (2) the interests of labor and industry. I think that there has been some confusion between these two conceptions both in existing and proposed legislation. Solutions that might satisfy labor or industry, or even both, may well not be in the public interest.

The first interest of the country is in the prevention, not of all strikes, but of Nation-wide, industry-wide, and even city-wide strikes, which threaten the public welfare, and under the condition that any solution to this problem must be along lines which do not violate our conception of liberal democracy.

The solution must be in the tradition of the best American liberalism and based on the freedom of the individual and freedom of competition. It should be away from all tendencies toward Government intervention and monopoly. Any solution of the problem which prevents industry-wide strikes, perhaps to the satisfaction of labor and industry, but which does so at the sacrifice of the best interests of the public, or by methods which are not democratic, is wrong. Any solution which unjustifiably increases the cost of goods to the public is also wrong. Examples of such solutions would be compulsory arbitration by the Government or agreements between labor and industry which were essentially monopolistic.

The public is not aware of this distinction. The settlement of strikes or their prevention by any means is usually treated by the press and by the public as an unmingled blessing. But when I read of settlements brought about by the intervention of Government, and perhaps the imposition of Government terms, such as in the various coal strikes, or when I read of peaceful settlement on a Nation-wide level based on "agreements" between large groups of employers and large groups of unions as in the recent Associated Contractors' agreement with the A. F. of L. I wonder whether the price of peace has been too great. Each one of such settlements may very well be one more step toward monopoly.

Certainly it is a step away from the free and unfettered competition between numerous small businesses, the existence of which is also one of the concerns of this Congress. And it is certain that, in some way and in spite of any laws, large groups of unions and of employees will more and more be matched by large groups of employers in self-defense; and agreement between such groups, while it may end strikes, could well be even more dangerous than the strikes themselves.

The basic solution to the problem, I believe, is to reduce collective bargaining and strikes to the local or company level, where no matter how much a strike may hurt the parties concerned, it has very little effect on the country at large. A strike in one steel mill is unfortunate but not of great inconvenience to the public and to industry generally, but a strike in the steel industry can stop the economic life of the country. If Congress can transfer collective bargaining and strikes

from the national to the local level, it is clear that most of the national impact of strikes would be eliminated. And such a solution conforms with liberal democratic theory by transferring emphasis from the national to the local level, from the large unit to the small unit, from absentee control to local autonomy.

The prevention of industry-wide strikes must be preceded by prevention of industry-wide bargaining and by the breaking up of industry-wide union monopolies. The only alternative must certainly be Government control and compulsory arbitration by the Government, and this alternative is one in which Congress, industry, and labor are agreed there are grave dangers.

Congress has before it legislation which attempts to reach this goal by forbidding industry-wide bargaining. I support this bill in principle and feel that it is the most important and fundamental bill before the Senate on the labor subject. I think that further study and perhaps amendment of its "area" provisions will be necessary, perhaps to a "company" basis. It may be that its aim could be better realized through amendment to the Clayton or Sherman Acts. I suggest that the most workable method of eliminating industry-wide bargaining and union monopoly lies in the elimination of industry-wide unions—and area-wide under certain conditions—as they now exist and their reduction to a trade-association basis, thereby eliminating the cause instead of trying to control the effect. I believe Congress should apply the same monopoly test to the organization and practices of national unions as is applied to trade associations under the antitrust laws, with the aim of reducing the control of national unions over local unions to the same advisory status as that of trade associations and their member companies.

Although I have not mentioned it in my brief, because I believe that Congress should approach the problem from the point of view of the country at large, and I should like to bring out at this point the unfairness of industry-wide unions. For the 4 years during which we have had a union, I have done my real negotiating with the international representative of the UAW. Even though the local shop committee was always present, it was evident that they had no real authority. The demands presented to us have been, for the most part, canned demands, written up by the New York or Detroit office of the international. The first contract this representative presented to us in 1943 was evidently written for an airplane company, since it contained certain detailed demands applicable only to an airplane plant.

As the line of least resistance our local shop committee has supported these canned demands, but it has been evident that they were virtually under orders to do so. This has been particularly evident in union shop and wage demands, which bore no relationship to the realities of our business nor of the area in which we are located nor, I believe, to the ideas of the employees.

This international union pressure came to a head last year. At that time the UAW formed what they called the "bearings division," and their negotiators told us frankly that they were aiming at absolute uniform wage rates and conditions of employment by bargain-

ing with the entire industry as one union. This, of course, is the highest-rated segment of the industry, with historical differences resulting from variable living costs and competitive conditions. Our largest competitor is a unit of General Motors, and it is extremely doubtful whether we can reach their rates and stay in business.

A serious drive was also begun against units of the industry for a union shop. The union has concentrated all its strength for the past year on two independent, medium-sized units of the industry, one of them in Poughkeepsie, which was struck for 6 months, at the end of which time they capitulated and granted the wage-increase demands of more than 18½ cents an hour and a union shop. The other, in Jamestown, has been on strike for 8 months and is still out, the real issue, I believe, being the union shop.

Another plant that has refused to sign a contract has been under every conceivable pressure by the international, including a threat of expulsion from the international. If that company is finally forced to give in, we expect to be the next attacked. Our contract expires this spring, and we were warned last year by the international representatives that we should watch out this spring. My testimony here may well precipitate the matter. Gentlemen, that is not a pleasant position or a fair position to be in. I am under no illusions. The international will try to close us up if they decide to force the issue, and in spite of the fact that the check-off that we have granted shows only about one-third of the bargaining unit as members, and in spite of the fact that we are generally considered to have the best places in New Britain to work, and that we pay among the highest wages. The iron fist and the not-so-velvet glove was very clear in our negotiations this last summer on the 18½-cent wage issue. It was a case of "either or." We kept a transcript of that bargaining, with full knowledge of the union, and I am disclosing no secrets when I quote several passages from it. We had offered 15 cents, and the discussion centered around that and the union's 18½-cent demand. I would like to quote a couple of passages from the transcript. This is the so-called head of the bearing division of the international representatives speaking:

There will be no contract signed with this management for less than the 18½-cent figure. Neither the local nor any staff member has the authority for settling for less than that.

And again:

My proposal is 18½ cents across the board. I don't think I am breaching a confidence when I say we are going to deal shortly with the bearings industry. I think we are going to try to eliminate some of your problems—

I don't know just what he meant by that—

so, if you can do something about narrowing these gaps now it will put you in a more favorable light when we sit down with all of you.

And once more:

On this question of wages, I can only emphasize that 18½ cents is the minimum for which we can settle. I don't want to appear arbitrary. I am merely outlining our position taken by the highest authority in the union. That is the policy.

And about 1 week later, July 24, 1946, this illuminating and complete statement by the same gentleman:

I don't want to be boring. I told you quite frankly that the position of the international union, whether you want to recognize that as binding on you, is the fact that we have established the 18½-cent pattern nationally. The local representative of the union cannot sign for less than that figure, so what is the result? We have a stalemate, and obviously we are going to use whatever tactics appear necessary to bring the company into our way of thinking. I don't want to be arrogant or obnoxious with the company, but unless the 18½ cents goes in, then we will have to have a test of accumulated strength this week or some time in the future. It is up to you whether we get together. We are not signing for less than 18½ cents. If you don't want to recognize the policy or pattern, others didn't want to recognize it either, but, by God, they have done it.

He was talking about the Poughkeepsie plant. And further:

You are dealing with the international union that has a certain policy on a given subject, just like on the question of incentives, enunciated at a recent conference. They said there could be no extension of pay on that basis; that this plant was a day-rate plant, and if you wanted to put incentives in, we would not agree. It is an impossibility for the local committee to agree to any form of payment in the plant that does not conform with the existing formula. They cannot sign for less than the 18½-cent figure, and the net result is going to be we are going to have a test to see whether we can force our way into it.

Senator ELLENDER. Is that the only issue, the 18½ cents?

Mr. COOPER. It was at that time. It was solely a wage-reopening clause.

Senator BALL. Did I understand you to say that your check-off showed that the union had only one-third of the employees in the plant?

Mr. COOPER. Yes; they have about 900 out of a total in the bargaining unit of approximately, today, I think 2,700.

Senator BALL. How do they get bargaining rights?

Mr. COOPER. They won the bargaining rights back in 1943.

Senator BALL. Your check-off, then, is on an individual voluntary basis?

Mr. COOPER. It is voluntary, but we were forced to agree that it was irrevocable.

Senator BALL. The individual employee authorizes it, but I was wondering how you knew they only had one-third?

Mr. COOPER. Because we have voluntary slips signed by the employees. It is the usual voluntary irrevocable check-off.

Senator BALL. They may have members that you don't know about?

Mr. COOPER. Yes; they may have. I don't know about that.

Bargaining with an international union is impossible with a company like ours, but it is not only because of our own disadvantage that I say industry-wide unions must be changed; it is because if this situation continues we could be forced to industry-wide bargaining or close down, and that, for the reasons I have stated, can be a bad thing for the country. We don't want to be a part of a labor-industry monopoly.

On the assumption that the public is protected by the elimination of industry-wide bargaining—and I think the public consideration is first in that matter—we then come to the problem of measures to protect labor and industry.

I feel, however, that this is a simpler problem, and if we can actually get bargaining on the local level we will find that many of our problems solve themselves. Closer understanding and sympathy between local management and local labor will help, and a certain amount of latitude as to the test of relative strength is salutary in inducing general collective bargaining.

I will touch on some of the proposals now before Congress, bearing in mind the fact that I am considering them in the light of their relationship to local bargaining and not as a solution to what I consider the first problem—that of industry-wide bargaining.

The first principle, of course, is that bargaining power be relatively equal as between the two parties. To this end labor should have the right to organize and should be protected in this right. I suggest, however, the requirement of an affirmative vote of a majority of all eligible to vote as a condition of certification instead of the present simple majority of those voting.

On the question of union security, I feel that compulsory membership in any union as a condition of employment should be outlawed; if a union cannot gain the support of the employees it is supposed to represent by its value to them and their respect for it, it is certainly not entitled to their support by compulsion, even with the connivance of the employer.

I would like to say here that while I have made the elimination of the closed shop secondary to elimination of industry-wide bargaining, I feel just as strongly about it as the witnesses I heard yesterday on that subject, but I wish here to stress what I think has been the least understood problem, abolishment of the closed shop and elimination of industry-wide bargaining. The right of the individual to work, even though others do not wish to do so, and the right of the individual to settle his own grievances with management, if he prefers, both without coercion from either party, must be preserved.

While the right of free speech is supposed to be inalienable under the Constitution, it seems advisable to insert a clause to that effect in the Wagner Act as an express directive for its interpretation by the National Labor Relations Board.

As the agency charged with the responsibility of interpreting the Wagner Act, the National Labor Relations Board should be divested of its prosecuting functions. The Board's functions should be solely judicial, and the prosecuting functions should be given to the Department of Labor or the Department of Justice. This would remove any taint of prejudice from the Board, and is only fair to its members.

I sat through a National Labor Relations Board hearing of ours earlier this week here in Washington on a question of discharges for violation of contract. I believe the Board members who heard the case are trying to be fair, but the recommendations of the trial examiner who took the testimony in New Britain are so grossly prejudiced and omitted so much of our sworn evidence and exhibits that they put the Board in a most awkward position when the examiner is one of their own employees.

There should be provision for new elections upon the request of management under certain conditions, possibly if it can be shown

that only a minority of employees in a bargaining unit are members of the union or even periodically.

The responsibility of unions to bargain in good faith must be made to match that now placed upon management. During our 9 weeks' strike at the end of 1945, our shop committee never receded at any point or 1 cent from their original unreasonable demands, in spite of the fact that during this course we made numerous concessions in efforts to get the men back to work.

The passages from the transcript of our bargaining this last summer, which I just read, are another example of what I would consider futile bargaining.

There must, however, be no compulsory arbitration of collective bargaining itself, but the conciliation service of the State and of the Federal Government should be strengthened and should aim for complete impartiality by their removal from the various labor departments, which are admittedly pro-labor, and by a general restaffing. I oppose the establishment of Government mediation boards. I saw what Government boards do to collective bargaining when I was on the War Labor Board.

There should be no obligation on employers to bargain collectively with foremen or any group which is at the same time considered management under the National Labor Relations Act.

Wages, hours, and working conditions on which industry is obliged to bargain under the Wagner Act should be defined. Those matters which must be left in the discretion of management, if industry is to operate efficiently, should be specifically excluded.

Strikes for demands which industry cannot grant, such as jurisdictional strikes, sympathy strikes, secondary boycotts, and so forth, should be punished by loss of protection of the Wagner Act.

I believe that these changes would restore equal and honest collective bargaining at the local level. Combined with the elimination of industry and Nation-wide bargaining, I believe they would place our labor problem in the proper perspective.

Thank you, gentlemen.

The CHAIRMAN. Are there any questions of Mr. Cooper? You have made a very concise statement, certainly, of your position, Mr. Cooper.

Mr. COOPER. I have striven not to take as much time as I saw was taken by some of the witnesses yesterday.

The CHAIRMAN. Thank you very much, Mr. Cooper.

Our next witness is Mr. Walter L. Fry, of Detroit, Mich.

STATEMENT OF WALTER L. FRY, PRESIDENT, FRY PRODUCTS, INC., DETROIT, MICH.

Mr. FRY. Mr. Chairman and gentlemen, I have noticed one error in the summary here that I might correct.

The CHAIRMAN. Mr. Fry, you might state first—you are Walter L. Fry, of Fry Products, Inc., located in Detroit?

Mr. FRY. That is correct.

The CHAIRMAN. What sort of company is that?

Mr. FRY. That is a manufacturing company. We have three plants—we really have four. Three plants are in Kentucky. They

are operating now, and we are starting another one. We manufacture automobile seat covers.

The CHAIRMAN. How many employees have you?

Mr. FRY. At the moment we have less than 100, because we have not been able to get materials. We have employed as high as 550.

Senator ELLENDER. All of your plants employ only 100 people?

Mr. FRY. My dear sir, if you were trying to get rayon and materials today you would maybe have less than that, because it is a most difficult thing. The work is in rayon, satin, and nylon, mostly, and paper fiber, and it is very, very difficult to get.

The CHAIRMAN. How many men are employed in your main plant?

Mr. FRY. Let me describe it this way: We used to ship \$230,000 worth a month. For the last year we have not exceeded \$40,000 at any one time.

The CHAIRMAN. How many employees do you employ in that one plant?

Mr. FRY. About 60 or 70.

The CHAIRMAN. At the height of business?

Mr. FRY. No; at the height of business we will run about 300 to 500 at the peak period. We have run up at the seasonal time—for instance, at one time one of the companies came and asked us to give them some 75,000 seat covers in 21 days. We gave them 80,000 in 21 days. At that time it took three shifts, over 500 people, to do it.

The CHAIRMAN. Men and women both?

Mr. FRY. About 95 percent women operators, and about 5 percent men.

The CHAIRMAN. I just wanted to get a picture of your business. You may proceed.

Mr. FRY. There is one correction here that I might make, and that is in the words "give small business legal right to operate a union or a nonunion shop." That is on page 2 of the summary. That is an error that we overlooked in some way, because, having run a nonunion shop I certainly know that we have the legal right to do it.

The CHAIRMAN. You would leave out the word "legal"?

Mr. FRY. Leave out "legal" and make it, I should say "protected right." As a manufacturer and an employer of labor for more than 46 years in both large and small business, I feel that I have had considerable experience on the general question of labor relations, particularly during the past 10 rather strenuous years. Today, however, I am here to speak as a small businessman, endeavoring to operate small manufacturing firms at a profit.

I, like many other, find the general subject of labor relations a very vast and complicated question, which, of course, cannot be covered adequately in the time allotted before this committee.

As I understand it, these meetings are being held in an effort to determine whether or not it is advisable to change the present labor laws and practices. In my opinion, if Congress does not change the present laws and current and past labor practices, thousands upon thousands of small business firms—the real backbone of our national economy—will be put out of business. I do not make this statement with flippancy or irresponsibility. It is based on personal experience and facts.

Fry Products, Inc., of which I am the founder and have been president over a long period of years, has just emerged from a 6-year period of financial distress under the control of a creditors' committee. This was as a direct result of a long series of labor abuses and strikes caused by constant union disagreements and continuous interference with the management and operation of the business. In less than a 14-month period, our annual business dropped from an approximate figure of \$1,509,000 to less than \$250,000 per year. Set up with an overhead to do \$1,500,000, it was impossible to carry on with sales at \$250,000 so we were forced to seek financial relief and protection through a creditors' committee.

Let me just put in one statement there. That was the price of not signing a union contract.

The CHAIRMAN. What do you mean by "a union contract?"

Mr. FRY. A contract with the UAW-CIO. So far I have declined to sign it. If later you care to have me explain my reasons for it, I will be glad to do so.

Here are the results of my actual experiences with the so-called individual labor gains:

Collective bargaining: This collective bargaining idea turned out, so far as we were concerned, to be really something. In fact, this little dream child should have been termed, in my language, a "Hiroshima special," as its destructiveness to the little businessman is about as great. On the face of it "collective bargaining" sounds perfectly reasonable and just. When first suggested a number of years ago, I would have considered any businessman grossly unreasonable who would not have accepted it in a just spirit of fairness. But after actual experience, I found just the opposite to be truth and fact.

I found the principle, as practiced by too many labor representatives, to be something totally different from my conception of fair or free collective bargaining. I found it to be sort of a leap frog technique, a legally supported, calculated system of arbitrarily raising wages not earned or justified.

Our machine operators, actually receiving higher pay for certain operations than any comparable work in Detroit, were ordered to strike by union leadership and to demand an unreasonable raise in pay. When we protested that the operators were already overpaid, mediators and union representatives insisted we were stalling and not bargaining fairly. The dictionary gives the definition of "mediate" as "to divide in the middle." Consequently, the union representatives insisted that we should at least meet labor half way. On any such basis as this, we were being coerced into granting unjustified, unreasonable raises in wages. We refused, so we were immediately condemned as being unfair to labor. Like blackmail, once you acquiesce and pay, you are continually at the mercy of additional demands, at the whim and dominance of unscrupulous labor leaders.

Based on such unfair tactics as this, we have definitely decided that the so-called fair collective bargaining is quite the reverse, and, in reality, becomes unfair collective bargaining. Union leadership is in a legal position to repeat continually their demands until the small businessman is eventually forced out of business.

This system cannot be called free or fair bargaining. The employer never has a chance. He is licked before he starts, if he must meet one-half of any or every demand labor leaders choose to make. It is like the bale of hay hung out in front of the mule. You never catch up with labor demands any more than the mule will ever reach the hay dangling before his nose.

Seniority: This is another point on which we violently disagree.

Here, again, we were due for a severe shock and disillusionment because the theory and principle of seniority seemed fair, equitable, and acceptable to industry. But we, in our small business, found in practice, or at least the way labor interpreted the principle of seniority, that it was anything but fair, equitable, or acceptable. We found it so grossly unfair to labor itself that at times I was tempted to think that seniority was a device of the devil.

And here is why. This is the way that the union's conception of seniority worked in our plant under the then-current labor practices.

I remember a new employee, for instance, a young man, bright, alert, full of life and energy, who was determined to do a good job. Call him young, call him green, but he was ambitious and he saw a world of opportunity, a chance for advancement, before him. Troubles, obstacles meant nothing. He had made up his mind to go out in this great big world of ours and make good. He may have been your son or my son. That young man presents a very definite picture before my mind at this point. He represented the kind of man any manufacturer is glad to get. Then he started to work, and the union wolves applied their rules on seniority. They figuratively put a chain around his neck with a dog tag stamped with a number. They blacked out his brain, because from that time on he ceased to be a free individual with freedom of thought and action. A shop steward immediately told him what he could and what he could not do. Whether he performed his job properly or improperly, mattered not to the shop steward. He was told quite definitely and, if necessary, it was forcibly impressed upon him that he could not do more work or produce more than the shop steward told him he could do. If he dared to protest, he did so at his personal peril and risk, usually followed by dire consequences.

If you gentlemen can think of or find any other way to break, more quickly or completely, the spirit of an ambitious young man, a promising, young, future executive and reduce it to abject inferiority, I don't know how. Six months under this type of seniority practices by union arrogance and we had a broken spirited, useless individual of almost negligible worth or value to himself, his family, or his Nation. That is the way the union's seniority rule worked in our plant, and, I believe, practically every other unionized factory.

We were not unionized. That is, we had not signed a contract, although we had a union committee, of course.

Well, you may indignantly ask, "Must a man of longer employment and acceptable efficiency be discharged or laid off to make way for a younger man?" "Certainly not," but for every one efficient employee of longer employment, we perhaps have several arrogant, lazy, indifferent, and inefficient employees under present union operation who

will refuse to accept discipline, to work efficiently because they know that, under union seniority rules as now constituted, they cannot be discharged or laid off and no matter what they do, their jobs are secure.

This may be called union security but it can, does, and will drive many a little business man out of industrial existence. In little business, every hour paid for must be productive, every nickel counts because little businessmen, as a rule, do not have the unlimited working capital that the larger corporations have, and goodness knows, the big companies find it difficult enough to operate successfully under such conditions. But the little man cannot and will not.

Slow-downs and sabotage: Yes; we had our full share of experience, trials, and tribulations with the so-called production slow-downs. We found that here was another diabolical plan devised and practiced by union leadership that I think needs immediate and drastic congressional attention and action.

I know of nothing to crush the courage of a small businessman, to take the heart and incentive out of him any faster than to see a strong, healthy, actually overpaid employee standing idly by, loafing, chiseling, stalling, doing half or less than the day's work he is being paid good honest wages to perform. I cannot fail to feel that many a small businessman has been put out of business by this type of "union leadership sabotage," this deliberate, arbitrary process of bleeding a small businessman to an industrial death.

I have put a note on here in which I say: "Don't send flowers. Just throw a monkey wrench in the grave." And that is about all he will have left, because that is true.

Increased labor cost as a result of slow-downs.

The simplest mathematical problem I know of is: If an employee receiving \$1 an hour produces one unit per hour, the labor cost of that unit is \$1. If a union steward forces the employee to slow down and take 2 hours, at \$1 an hour wage, to produce the same unit, the labor cost on that unit would be \$2.

You, as a customer and purchaser of that article, eventually pay that extra dollar of labor cost in increased prices.

Closed or union shop: The closed and union shops are both schemes or inventions devised by union leadership whereby supposedly free-men, in a free democracy, become economic slaves and cannot work in a unionized industry or plant without joining a union and paying tribute.

Neither the so-called closed shop nor the union shop gives a man the right of free determination as to whether he wishes to join a union or not. However, even in so-called open shops with union contracts, it has been found by employees to be very unhealthy not to join, a decision all too frequently impressed, in no uncertain terms, upon a new employee, by union representatives.

Our own actual experience with this so-called labor gain was that many of our young women employees not physically capable of defense were told that they would either sign or else. Many of the male employees were treated more roughly. There are tens of thousands of similar cases of intimidation, coercion used in the forcing of free labor

into unions, which you gentlemen are well aware of without any further mention here.

Gentlemen, may I ask in all sincerity and humility, "Is freedom of labor of any less importance than freedom of speech, freedom of worship, freedom from want, and freedom from fear?" I think you will agree that we cannot have a closed shop, a union shop, and freedom of labor.

Portal-to-portal pay——

The CHAIRMAN. I think you might skip that, because we are not considering that. Another committee has that subject before it. We would be glad to put it into the record and read it later.

(The matter referred to appears hereafter.)

Mr. FRY. Next is: Limit free strikes to 30 days. Before going into this subject I would like to digress just a moment. I took the liberty of showing this brief to a trained newspaperman in Detroit, and he said that this would take away the right of a man to strike. I don't think that is correct, because the right to strike, the right to work or not to work, individually or collectively, is an accepted, fundamental concept of our democracy. I firmly believe in the principle of unionism. I do not accept union leadership as now constituted.

Now, limit free strikes to 30 days. This may prove to be a rather provocative statement, although I feel that I am right and feel that I am justified. In fact, I feel that the industries would like to do a little bargaining on our own side.

This is a subject which I consider of the greatest importance. We, as a small business firm, found the cost of strikes and frequent interruptions of production not only prohibitive but beyond our financial means to cope with. Whether these strikes were of long duration or a continuous series of short strikes, the financial losses to our company were staggering.

Also particularly damaging and serious was the cancellation of exclusive contracts running into hundreds of thousands of dollars which we had held continuously over a long period of years, as well as the loss of good will and our reputation as a reliable source for the delivery of merchandise. These assets were completely wiped out, a total loss. These and other losses make a financial burden beyond the ability of any small manufacturer to meet.

We found that under the current laws and practices, it was quite possible for representatives of the labor union to not only break us but they could also break any small business or industry in the Nation by a deliberately planned strike for an indefinite period or a long series of strikes of short duration.

It is my contention that no man or group of men, union or otherwise, should have the right or should be permitted to be in a position to destroy another man's business or property, or to take away corporate or individual profits. Nor do I think it is fair or equitable for a union to be permitted to indulge in long strikes or a series of short strikes without the responsibility of having to pay at least for part of the legitimate losses caused the employer.

I, therefore, suggest to this committee that a law be passed to limit free strikes—that is, free of cost to striking unions—to 15 days or to

three short strikes of limited duration, after which the striking labor union and its international unions are to be made financially responsible and made to pay one-half of all losses of the employer and costs of the strike, including maintenance costs, carrying charges, one-half of the capital-asset losses, one-half of the lost profits, as well as some restitution for the loss of orders, contracts, and good will.

Protect by law the right of the small businessman to operate a union or nonunion shop.

As an American citizen in a free country, I request the right of all small business men to operate a union or a nonunion shop in accordance with their own choosing. This right should be protected by law against unionization through interference, intimidation, or coercion.

I believe in the right of every worker to decide for himself, as a free man, whether he prefers to work in a union or a nonunion shop. Let the advantages, the incentives, and special inducements of both union and nonunion shops bid and compete for labor on a free and open basis.

I am confident that you will find a minimum of strikes and better paid, better satisfied labor in the nonunion shop because what labor gets in a nonunion shop, they keep.

All too frequently, what union demands get for labor in union ships are lost in dues, assessments, and lost wages due to strikes and lay-offs, either caused in their own plant or by sympathy strikes in other plants.

Undoubtedly, the present union leadership will object. I feel they are mistakenly objecting to any change in present labor legislation because they are afraid to face any open competition based on an improved service to the rank and file of labor. What have they to offer labor as compared with the steady work, greater pay, congenial working conditions and chance for advancement offered by the great majority of nonunion shops?

After 10 years of uninterrupted power, what has union leadership actually accomplished for the betterment of the workingman, for industry, for the Nation?

I think that I, unfairly, have often been classified as unfair to labor because I have refused to sign a union contract. That is not fair, in my view, for this reason: That I feel that labor is entitled—I have been a laborer—the worker is entitled to more than wages. He is entitled to a share of appreciated material worth. Having personally been a laborer, a wage earner, and also an employer, I sincerely believe that labor and wage earners are entitled to something more than wages. I believe that the wage earner is entitled to a portion of the appreciated material value of a company or of its industrial growth.

Briefly, if a small company starts business with capital assets of a very modest sum of \$1,000 or even \$100,000, and eventually becomes worth considerably more in capital assets, the laborer, the wage earner, and salaried employee who helped to build, accumulate these increased assets are entitled to something more than the current wages they have received.

Believing as we do, we have inaugurated as an incentive system in one of our small plants, the payment to the wage earner of a percentage

of the net sales, divided equally among all employees, payable monthly. On every dollar's worth of production shipped and paid for the workers get a cash percentage or commission.

I found that it was not feasible to base this type of an incentive plan on the percentage of profits because profits and losses vary according to constantly changing conditions beyond our control as well as the individual disagreements as to the interpretation of what is "profit."

From all indications, we feel that this cash incentive system is doing more to alleviate labor troubles in our small business than anything else we could possibly conceive.

On that last statement I would just like to make one note, that a man who was president of the union, who fought me for six straight years, is now one of the finest employees that we have in this nonunion plant, and he feels that the incentive plan is one of the real solutions. He is no longer a union man.

The CHAIRMAN. You say you will not sign a contract of any kind with a union? Don't you have to, under the National Labor Relations Act? You mean they do not have a majority of the employees?

Mr. FRY. They do not have a majority of the employees. They are not up to that point, and until they do, of course, we do not have to sign a contract. But I did not sign it for the reason, first, because I do not believe that any small businessman can succeed the way they are handling matters. We were paying higher wages, I think, than any other firm in our industry, and the one reason I did not sign it, above every other reason, was that if you sign a contract, then you are compelled to stay there in order to make good your part of that contract. In other words, you cannot move. We could not run successfully and profitably in Detroit, and we had to move. If I had signed that contract, Senator, I could not move.

The CHAIRMAN. You could not have moved away from Detroit?

Mr. FRY. I could not have moved away from Detroit. We would have been out of business. Our records will show that. Our financial statements will show that we would have been out of business and would have lost our stockholders' money, and all the years we have put in in building up an industry and furnishing a great deal of employment would also have been out of business.

(Mr. Fry submitted the following paper on portal-to-portal pay:)

PORTAL-TO-PORTAL PAY

It does not seem to me that the full potential results of this new brain child of labor leadership is appreciated or realized by either industry or the Government.

You are all familiar with the general aspects of the subject of portal-to-portal pay, but have you thought of it from this angle?

In the ordinary course of business, we, as businessmen, present our bankers with an audited statement setting forth a true picture of our financial assets and liabilities, including, even remotely, contingent liabilities. If warranted and justified by the presented audited statement, the banker usually grants our request for loans.

Now, if the union sued us for back portal-to-portal pay and won a judgment, covering a period of from 1 to 6 or 7 years, it could not only easily destroy our company financially, but thousands upon thousands of banks in this Nation who have, in honesty and good judgment, advanced tens of thousands of other little businessmen loans, possibly running into millions, might find themselves either

financially embarrassed or ruined as a result of having an untold number of uncollectible notes.

If portal-to-portal pay suits are to be recognized and permitted, then in my opinion, there is not a single bank in the United States who has loaned money on unsecured notes to those firms being sued for portal-to-portal pay, who can or should be permitted to list those notes as an asset.

And with the same cold reasoning, by what right are the stocks and bonds of those concerns facing adverse portal-to-portal judgments, which would wipe out every asset they possess, being sold this very moment on every stock exchange in the Nation.

I would like to suggest that a law be passed making illegal and uncollectible any claim for labor or services rendered beyond 30 days.

The CHAIRMAN. Thank you very much, Mr. Fry. Our next witness is Mr. Ira Mosher, chairman of the executive committee of the National Association of Manufacturers.

STATEMENT OF IRA MOSHER, CHAIRMAN, EXECUTIVE COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. MOSHER. Mr. Chairman and members of the committee, my name is Ira Mosher. I am chairman of the NAM executive committee and vice chairman of the NAM legislative policy committee. I come here as the representative for the National Association of Manufacturers, which has a membership of 16,500 manufacturing companies who employ 75 percent of the manufacturing employees of the Nation. Most of these companies, in fact three-fourths of them, are small and medium-sized firms, employing 500 or less. I should like to emphasize this fact because it is the many thousands and thousands of small companies that have suffered most from the situation we are here to correct.

In testifying today at your invitation, I come before you as the authorized spokesman of the NAM, rather than as a single industrialist, to present the program of basic principles that the association believes must be reflected in the national labor policy, through legislation, if we are to fulfill our responsibility toward the Nation and move forward toward enduring industrial peace. Should I make any statements here as an individual, I shall make it clear that they are my personal views.

The program I want to lay before you is based upon the conviction that neither free competitive enterprise nor free labor can long endure if management and labor persist in putting their selfish interests ahead of the interests of the public. We base our program on the theory that what is good for the public is good for business; what is bad for the public is bad for business. We seek neither special favors nor immunities; nor do we seek punitive measures against other groups. We do not believe in punitive legislation. We do not seek to restrict the choice of employees if they wish to bargain collectively, nor do we seek to impose restraints upon the unions, which in any way would interfere with their legitimate activities.

We believe that the whole Nation has suffered from the pulling and hauling by special interests that have no regard for the best interests of the people as a whole. The remarks we make are based on the conclusion that industry cannot thrive unless our whole economy is bene-

fited, and that the interests of industry and management, as well as labor, are identical with the best interests of the public.

Industrial strife cannot be reduced by fiat. The idea that strikes should be outlawed is neither practical nor sound. Involuntary servitude is the last thing we want in this country. The right to strike as the last resort when collective bargaining between employer and employee has reached an impasse must be preserved, but we can and we must complete a framework of orderly procedure which will retain the right to strike and preserve it from being abused and misused. The solution is not in legislating agreements between labor and management. Agreements must come from those parties themselves.

I want to emphasize that the solution to industrial strife is fundamentally simple. We can solve the problem if we create the conditions which enable management and employees to deal directly with each other and to settle their problems right where they arise. If we accept that basic premise, we can immediately discard the demands and proposals for Government intervention, super boards, labor courts, and extensive labor codes, which only interfere with the development of sound solutions by the parties themselves.

Both the employer and the employees have mutual interests. They have a common interest in the company and its progress. They can and will work out these problems satisfactorily without industrial or social upheavals, if we will take away the external obstacles which interfere with the fundamental relationship that exists between employers and employees. It is simply a question of creating conditions which will provide the incentive for them to settle their arguments, rather than provide the rules for perpetual warfare.

Now, these external obstacles which prevent labor and management from settling their own problems are:

1. Government intervention, whether it be through compulsory arbitration, permanent mediation boards, legislation which destroys collective bargaining agreements, or politically directed fact-finding.

2. The obstruction of industry-wide bargaining and of secondary boycotts.

3. Union objectives which conflict with the best interests of the employees, which crop out as strikes that have nothing at all to do with wages, hours, and working conditions, strikes which are not the result of employee wishes and which are forced upon employees through compulsory unionism.

4. The inequities which result from one-sided obligations and responsibilities under existing laws.

Now, it is these external barriers to successful collective bargaining at the plant and company level that concern us. There is nothing wrong with the principle of collective bargaining where employees voluntarily choose to bargain collectively. There is everything wrong with collective bargaining which rests not upon the free will of employees involved, but upon external compulsions, whether these derive from government, from national unions, from employers, or from inequitable laws.

I am going to refer to the brief. I have covered some of about six pages.

On page 6 we start off with the Government determination of conditions of employment. Now, employers and employees cannot be expected to bargain in good faith if both parties know the Government is ready to rush in with an imposed solution if they fail to reach an agreement. There are those who attempt to dispose of the whole problem by saying if the parties cannot agree, let the Government decide. They draw upon the analogy of other disputes which can be settled by a court of law.

I want to point out that the analogy is completely unsound and inapplicable. Other disputes which go to court are settled either under the basis of existing contract or under the basis of applicable laws. But when labor and management differ upon the terms of collective-bargaining agreements there is no contract to be interpreted, and there is no law which sets forth what that agreement should be, nor is it possible to write such a law in view of the complexities and the ramifications of industrial relations.

I would like to quote an example. If you do not want to sell me your house for \$15,000, I cannot go to a court of law and ask the judge to order you to sell me that house and then give me a nice mortgage with a low rate of interest. That is precisely the kind of situation we face when we demand that a labor court or a Government arbitrator determine the terms of a contract upon which the parties cannot agree voluntarily.

Compulsory arbitration is unsound in principle and has failed in practice. Resort to compulsory arbitration means we have abandoned the principle of collective bargaining in favor of Government control.

The proposal for a Federal Mediation Board does not have the obvious interference with collective bargaining that is applicable to compulsory arbitration. Nevertheless, the creation of any permanent mediation board would encourage that board to get into disputes where it is invited and into disputes where it is not invited, and that board cannot help but store up a large body of precedents which are bound to be utilized in subsequent disputes, whether conditions are the same or not.

To a degree, it has some of the effects of compulsory arbitration, since the mere existence of such a board is an invitation to short-circuit collective-bargaining responsibilities and drop the problem in the lap of the board.

THE CHAIRMAN. Would you abolish the Conciliation Service entirely?

MR. MOSHER. No, sir.

THE CHAIRMAN. What is the difference, from the point of view of interference with the parties?

MR. MOSHER. The Conciliation Service can be a group of individuals, skilled in that particular form of activities, whose services are available where conciliation appears to be desirable.

THE CHAIRMAN. Why is not the Board just the same? I do not see the difference in principle. The only purpose of the provision of this law providing for a mediation board would give it more impartiality and somewhat more prestige, certainly not encourage it to interfere

in any dispute more than the Conciliation Services interfere or have been called in.

Mr. MOSHER. I think it is more in practice, perhaps, than in generally trying to compare the theory of the two set-ups. I think with a formal board set up as a formal mediation board, it would presumably be set up to run on pretty much of a formal basis. It would create a whole series of precedents, as has happened in most of these boards, to the end that either party in a collective-bargaining arrangement, sensing that he has an advantage, goes through to that board, based on the precedents that board has established in the course of its action; then you would not have collective bargaining.

The CHAIRMAN. If they confine themselves properly to mediation, the function of mediation does not set a pattern of any sort, or a precedent of any sort. I do not think the Conciliation Service has done that, as far as I know. It has been these other boards assuming to say what the facts are, assuming to pass on the rights of the dispute.

I do not understand that a mediation board, properly limited, confined, and described, can pass on the rights of a dispute.

Mr. MOSHER. I agree with you, sir, but it seems to me, and it is our opinion, that when you have a formal set-up of that nature, you cannot help but see a set of precedents arise out of the decisions which are public decisions, more or less at least.

The CHAIRMAN. No; there is no public decision—not if the board properly operates as we intend it to operate. There is no public decision whatever. Their only public decision will be that they have been unable to get the parties together, that they have been unable, perhaps, to get them to agree to compulsory arbitration, and so they have had to retire from the case. That is about all the public report they can make.

Mr. MOSHER. I would like to agree that such a board could be run on that kind of basis, but I have to draw on history a little bit in recent years on Washington boards, and from that history I cannot but draw the conclusion that those boards work on a set of adopted principles.

The CHAIRMAN. Just because you call it a board, you mean, instead of calling it a conciliation service?

Mr. MOSHER. I will not argue about whatever name we call it. I think the Conciliation Service, working through individuals at the source of the trouble, has and can accomplish a lot of good. I think a formally set-up board, working in Washington, cannot accomplish that result.

The CHAIRMAN. The boards you have referred to are all boards who were specifically delegated to make decisions, like the War Labor Board. They were supposed to do it, of course. I agree that would be something entirely different.

Mr. MOSHER. Well, looking at it from the attitude of those of us who live out in the sticks, that board, sitting in Washington with the authority of the Federal Government behind it, creates a halo, which is not good for local collective bargaining.

Of course, all through my brief I am arguing for getting collective bargaining back on the plant level, which is the only place where it can be adequately handled.

Senator ELLENDER. You evidently have not read or studied the functions of the board we are seeking to create. It has no rights except to try to get the parties together, iron out their differences; that is all.

Mr. MOSHER. I have read the bills and studied them very carefully, Senator Ellender. I still—

Senator ELLENDER. But, will you point out in Senate bills 55 or 404, any of them creating a board, where the board would have the right to make decisions? Point that out to me; I would like to see it.

Mr. MOSHER. I cannot find it.

Senator ELLENDER. Of course you cannot.

Mr. MOSHER. I am not maintaining it is there. I am maintaining—with all sincerity, I hope you will grant me—

Senator ELLENDER. Yes.

Mr. MOSHER. That when you establish a Washington board on a formal basis, you will create around that board a set of precedents in the actions they take.

Senator ELLENDER. You mean in the decisions they make?

Mr. MOSHER. In their recommendations, if you please.

Senator ELLENDER. But, they have no right to make decisions.

Mr. MOSHER. In their recommendations and their actions in mediating.

Senator ELLENDER. They do not have that right.

Mr. MOSHER. I grant you that, by the proposed laws.

Senator ELLENDER. That is right.

Mr. MOSHER. The laws do not give them the right to make decisions. The laws place them in the position of mediating in these various circumstances, and, as they mediate in certain circumstances, the results of their recommendations—and they cannot talk to two warring parties without making certain suggestions; we won't call them recommendations—will create a body of precedents. You cannot avoid it, sir. With a halo of a Washington board, it will not work.

Now, I know that plenty of mediation boards, by whatever name, have worked, and worked fine.

Senator ELLENDER. Has the Conciliation Service you favor ever established precedents?

Mr. MOSHER. No, sir. It is not a formal board. It is a group of individuals who work individually around the country.

Senator ELLENDER. That would be the function of this board.

Mr. MOSHER. Where you have a good conciliator.

Senator ELLENDER. That would be the function of this board. The board itself would not do much mediating. It would simply supervise and send into the field, the same as the service now being granted, in order, through conciliation, to get labor and management together. That would be its function.

Mr. MOSHER. Well, the question can well be asked, "Why do you need a board under such circumstances?"

Senator ELLENDER. Would you object, instead of having a board, to having a single administrator?

Mr. MOSHER. I do favor a conciliation service that is available in cases where it appears to be desirable, whether that board is tied

into an existing department or whether it is independent. That is a point which is important, but one which perhaps we will not need to discuss here.

I continue to point out that the formation of a formal board with a Washington halo will seriously interfere with collective bargaining, whatever the law, whatever the rules may say in the bill.

I want to point out that unless we get this thing back to plant levels, local levels, where the employers and employees have a common interest, we cannot accomplish what we want to accomplish—what you want to accomplish, what I want to accomplish and what we all want to accomplish.

I know of services in cities of this country that are very effective. They work right there at home. I know of State groups that are effective. I continue to maintain that a mediation group in Washington, formally set up, would not work.

SENATOR ELLENDER. You have a right—

MR. MOSHER. Perhaps that can only be determined by experience, sir.

SENATOR ELLENDER. You have a right to your opinion.

MR. MOSHER. I do not want to be too obstreperous about this.

SENATOR ELLENDER. I know; but I think you may be wrong.

MR. MOSHER. I may be. It will not be the first time, sir.

THE CHAIRMAN. You may proceed.

MR. MOSHER. We have that pretty well covered in our brief on page 9.

On page 8 we mention something about fact finding, which I will not take your time to go into. About all I need to say is that we did not have fact finding as such. It was a thoroughly unjustifiable interference by the Government for wage-fixing purposes. I am sorry to have to point out that the theoretical advantages of fact finding, which I sincerely believe in, have simply been destroyed because in practice they have been discredited.

That goes along the same line as my remarks about the mediation boards.

In the brief we make some mention of portal-to-portal suits. I will not take your time to go into that, unless you wish to have me do so.

THE CHAIRMAN. That is before the Judiciary Committee.

MR. MOSHER. I do want to point out it is that same law, carried to absolutely absurd ends, that today has made it impossible for an employer to even pay a bonus or even a share of his profits as a token of appreciation of cooperation without incurring an unforeseen retroactive overtime penalty. That is the extent to which those regulations and subsequent decisions have been carried.

Now, specifically, we are opposed to any proposal which provides for compulsory arbitration, and we oppose those bills and portions of bills that provide for a permanent Federal Mediation Board.

On page 10 in the brief we go into industry-wide bargaining. That is the second major external obstacle to sound relations at the plant or company level which is so necessary for good collective bargaining.

I would like to point out that last year during the President's Labor-Management Conference, I received a good many letters from employers who were aghast because their unions, upon instructions from

national headquarters, had filed strike notices when there was no dispute in their plants. That was the expression of union strategy in the steel corporation case. It did not have any bearing upon the relations between managements and employees in hundreds of other companies and plants.

Strikes were called affecting hundreds of plants in which there was no dispute between employees and their employers. That is certainly the most unjustifiable kind of interference with sound labor relations.

In condemning industry-wide bargaining, I want to make it clear that our position is not based on any supposed advantage for industry with respect to unions. There are outstanding spokesmen for both management and labor on both sides of the question. We are just as much opposed to aggregations of employers as we are to aggregations of unions for collective bargaining, wage fixing, or price-fixing purposes.

If industry-wide bargaining fixes rates throughout an industry, such wage fixing comes very close to price fixing, since wages in general constitute about two-thirds of the total cost of products. We oppose monopolistic practices on the part of industry, just as we do on the part of labor.

I understand there are a great many proposals in front of you for eliminating industry-wide bargaining. The proposals do not go far enough, since they permit industry-wide bargaining within a 100-mile area. Any prohibition of industry-wide bargaining which permits the complete shut-down of a vast metropolitan area is inadequate to deal with the problem.

Our position is that collective bargaining, to be effective at the plant level to stimulate plant-level harmony, and to protect the consumer against monopolistic power to exploit, to protect the public against industry-wide strikes and Government operation of industry, should be limited to the employees of a single employer.

Senator BALL. I take it, then, Mr. Mosher, you would eliminate the present practice in a great many communities, in the printing industry, laundries, trucking, and a number of other industries, of negotiating city-wide agreements?

Mr. MOSHER. I would, sir.

Senator BALL. Do you not think that certainly would force some substantial changes? I am inclined to agree with you that economically there is a sound argument for doing that, but——

Mr. MOSHER. I would apply the same rules and regulations that are applied in attacking monopolies of any kind. I am trying to refrain from indicating I think all those rules and regulations are all they ought to be. But I am simply stating that I think fair rules and fair regulations, and fair laws, of course, attacking monopoly are applicable to all the situations. I think they are applicable to local situations as they are to national situations.

Senator BALL. Then, would you not run up against this situation, though, that the employees, particularly in the craft-union set-up, where all of the carpenters or all of the machinists, or all of the plumbers in a given city belong to the same local union? Do you not, in effect, get city-wide bargaining no matter what you do? I do not see

how you could deprive the union of the right of setting a union scale in that town.

Mr. MOSHER. That is a tough one, that particular one where you have a series of industrial plants, and the carpenters in each one of those several plants are in the craft union. That is a tough one, and it may call for some sort of special handling.

On the other hand, I submit that for all of the carpenters in a given city in the building trades to get together with their employers to create a wage scale is monopolistic, and the public pays a wholly unwarranted price for that kind of agreement.

The CHAIRMAN. However, as far as carpenters are concerned, in most cases, it is hardly interstate commerce, even under our present extensive laws. I hesitate to push this thing so far to assume jurisdiction of every local industry.

Mr. MOSHER. Well, I hesitate, sir, to get into any discussion with you about the application of interstate commerce. You know the decisions in recent years much better than do I.

The CHAIRMAN. They have pushed it pretty far. But, I do not think we want to encourage it.

Mr. MOSHER. I agree with you. I do not think we want to push interstate commerce into every local village and hamlet in the land. It has already been done to some extent.

The CHAIRMAN. I would like to get your idea of this industry-wide bargaining. I see how you can say that in every union you cannot have the international union as the bargaining agent. That seems to be the practice in the steel industry today. You have to have the local union as a bargaining union. How do you propose to keep the local union from having an international representative there? They may make one of their official a representative of the international. He may be a local man, although perhaps not working in the plant.

How are you going to prevent the influence of the international, at least, in bargaining? Or do you propose to do it? Do you think it is enough just to say that they cannot be there themselves?

Mr. MOSHER. Well, I think if you restrict that bargaining to that local unit, whatever that local unit is, the union that has charge of the employees in that particular unit of the company will accomplish the job, certainly. I cannot see any law that prevents my consulting with anybody I wish to.

The CHAIRMAN. That is the way it seems to me. I do not see how you can prevent the local union from consulting with the international president and getting his views on what they ought to do. You do not object to that?

Mr. MOSHER. There is no law, certainly, that can remove that type of influence, because there are some of us who do consult a lot of people when we propose to do something.

The CHAIRMAN. It is pretty hard to say that an employer cannot consult with the National Manufacturers' Association to get their advice.

Mr. MOSHER. I had that in mind, sir.

Senator BALL. Do you not think you could frequently prevent the international from dictating or vetoing the terms of a contract that the local negotiates?

Mr. MOSIER. The thing I want to see stopped is this sort of thing. I have enjoyed some rather good relations with local union leaders in my own particular part of the country, and I talked to one leader, and he said, "I have got to call my men out on strike next week. I have not had any trouble with any of my employers. But why in hell should I have to pull my men out to protect a situation out in Texas? I am up in Massachusetts."

There is another situation that actually concerns us in more than one case. A union man says to me, "I have a contract here. I have come to an agreement with my employer on wages, hours, and working conditions. The international union will not sign, or they will not let me sign. I have to go back to that employer with a contract that has 27 provisions in it. I do not know what they mean, and I am sure I am never going to be able to sell my employer. I do not know what is going to happen."

That is not my case: it is rife right across the whole United States. That is the control that is attempting to be exercised at a certain headquarters that cannot be tolerated.

I sat on the War Labor Board a couple of years and came to decisions in the morning. A telephone call to Washington at the lunch hour, and labor comes back and changes the position. Somebody was giving orders. Now, I say that is a rank monopoly, and it has to be stopped.

Senator BALL. Do you think we can do it? That is what I am getting at. From your experience with the leaders of these locals and the rank and file of the members of locals, if we gave them in the law some leverage by which they could get out from under the domination or dictation of the international—obviously they can take their suggestions and act on them, but so that they are free agents—do you think they would take advantage of that leverage and operate as free agents?

Mr. MOSIER. It is my opinion, sir, that a great deal can be accomplished. I would not say we will go 100 percent of the route. We have got to take the general picture. Only 25 percent of this country is organized, to start with. If there are 8,000,000 people, as is claimed by labor, organized in closed-shop or union-shop set-ups, you still have to bear in mind what the public polls say—that sixty-odd percent, I think the figure is, vote against the closed shop.

Now, with those circumstances in the background, there is no doubt in my mind that in the bulk of the situations in this country the local union people want to do the job with their local employer and be left alone to do it.

Yes; there will be times when they will want to consult and get all the advice they can. All employers are not all they ought to be. I do not claim they are.

Senator BALL. It probably would help some, too, if the dues under the check-off were paid to the local instead of to the international. I do not see how any local can have any freedom of action when its finances are entirely controlled by its international, as is the case in the steelworkers and the United Mine Workers.

Mr. MOSIER. I think that follows, sir.

On page 13 in the brief we go to secondary boycotts. That is another one of these extraneous deterrents to sound relations between em-

ployers and employees. It is the medium through which the extraneous disputes are permitted to disturb the relationships between employers and employees.

That boycott can manifest itself by refusal to handle the goods of a particular employer, by striking, or by placing pickets around a plant in which no dispute exists—pickets which prevent delivery and shipping of goods.

The secondary boycott has been used to force employees to join unions not of their choice, and in other ways to serve the purposes of union strategy. There is no justification for permitting that kind of abuse of power which makes the employer, the employee, and the public all suffer alike.

Those who engage in secondary boycotts ought to be refused the protection of the Wagner Act. They ought to be made subject to injunction in order that the interests of those who are involved can be properly safeguarded.

The secondary boycott is certainly one of the principal weapons which destroy sound collective-bargaining relationships. Under the law as it now stands management is absolutely helpless. The smaller the company, the more immediate the danger.

Then, when you combine a secondary boycott with industry-wide bargaining and the closed shop, you have, in a few men, the power to absolutely wreck the whole country.

That is rather an oversimplification of the importance of secondary boycotts.

Senator BALL. Are you familiar with our section in S. 55 on secondary boycotts? I wondered whether you think that does the job adequately?

Mr. MOSHER. I have not attempted to take the particular language of any one of the several bills. My impression is that it fairly well covers it.

The CHAIRMAN. It is a difficult problem, I will tell you, from a legal standpoint, to define what you mean—

Mr. MOSHER (interposing). Very difficult.

The CHAIRMAN. When you speak of the secondary boycott. There are all kinds.

Mr. MOSHER. I am looking at page 16 of your bill. I did not know what one of the references meant as to establishing a picket line and the upholding of a picket line.

My answer to your question becomes, then, that I see no particular objection to the thing as written.

Senator BALL. We did except the the secondary boycott where the employees refused to cross picket lines established by a union which represented a majority of the employees of the plant where the picket line existed.

Mr. MOSHER. That was the only part that I questioned in my little hieroglyphics.

Senator BALL. We wanted to get rid of the secondary boycott which takes place when the union has no employees in the plant picketed, but simply establish a banner line and say it is unfair, then the teamsters refuse to deliver. That is the method they are using in a good many cities to force organization.

Mr. MOSHER. I have had a good deal of discussion with reference to leaving the picket line as you have in the bill. I have no reasonable suggestion to make to improve it.

On page 15 of the brief we go into, at some length, union objectives that interfere with the best interests of the employees and interfere with the best interests of their own members.

Now, these objectives frequently interfere with sound relations between management and the employees. Such abuses as jurisdictional strikes, sympathy strikes, strikes against the Government, strikes to force an employer to ignore or violate a law, strikes or other coercive action to force recognition of an uncertified union, strikes in violation of contract, and strikes to enforce featherbedding or other restrictive demands are not strikes for legitimate purposes of improving wages, hours, and working conditions. They are not legitimate union activities. They hurt the employer, they hurt the employee, and, what is more important, they deprive the public of goods and services, and they do not do anybody any good—the union member least of all.

A strike or other coercive action or tactic against an employer over a demand which he is powerless to grant is obviously a clear abuse of collective bargaining, and they have had a good many of those. A strike for recognition of a union when there is an available procedure already established by law for determining questions of representation is unjustified. In other words, the jurisdictional strike.

Such tactics can be effectively discouraged without in any way limiting labor's right to strike by providing such remedies as the following:

1. Permit the employer full freedom to discipline and discharge those who participate in or instigate these activities.

2. Withdraw the protection of the Wagner Act and the Norris-LaGuardia Act from those who engage in or instigate these actions.

3. Enable those who are damaged by such actions to recover through civil suits against the individuals involved and, if such actions are sponsored, directed, or instigated by a union, against the union itself.

These remedies, in our opinion, will go a long way to correct that situation.

The CHAIRMAN. Mr. Mosher, I would like to have your views and suggestions on the question of jurisdictional strikes. It bothers me. I think there is no law here that actually finally settles it—no proposed act.

Suppose we have a case like the present dispute between the common laborers and the carpenters as to who shall tear the forms off concrete work. There are a number of strikes going on in the country today because of that difference.

How are we going to determine who is right? I mean, Does it require the setting up of machinery to decide that jurisdictional question? Of course, the labor people have set up some machinery, but suppose that does not work? How are we going to decide when a jurisdictional strike is justified?

I mean, if the carpenters will say, "For years, in this case, the common laborers have been doing this work," and the employer, we will say, arbitrarily, because he is under pressure, gives the work to the carpenters, it does seem to me that the common laborers have the right to go out and strike if the merit is on their side.

Now, how are we going to determine whether the merit is on their side or not? That is a problem that worries me about that type of jurisdictional strike.

Mr. MOSHER. I start in, Senator Taft, on a little different basis than your thinking. I start in with the premise that there can be no justified jurisdictional strike. There cannot be.

Senator ELLENDER. You would outlaw them completely?

Mr. MOSHER. I would outlaw them lock, stock, and barrel.

Now, then, perhaps, and I have not studied it from this angle I will admit, a union under certain circumstances should have some right of appeal. In the first place, I think it is up to the employer to decide who will do the work in the plant, and I do not think you can give it to anybody else.

I can remember a long, involved argument in Washington here a year ago at the Labor-Management Conference, when it was proposed these could be settled by a board. Look at a big plant that has, as in my case, tinsmiths, plumbers, pipers, and all the rest of the crafts. You let anybody decide who is going to do those jobs except the boss in the plant, and the plant is wrecked.

The CHAIRMAN. However, it certainly gives him the power, then, to wreck a union that happens to be less powerful and not able to bring the same pressure to bear on him as a big union.

Mr. MOSHER. Yes; if we carry our imaginations a long ways along the line, we constantly run up against that argument that an employer can wreck the union. Now, I am not going to sit here and try to claim that employers have not tried to wreck unions, or that they will not in the future. But, I submit the bulk of employers in this country are solidly behind collective bargaining. They want labor peace, and, in any event, they want production.

The CHAIRMAN. This does not, however, have anything to do with collective bargaining. The question is, Who has the right to bargain collectively on that job, on that particular work? and I do not quite see how we can just arbitrarily say that one union can throw another union out with the employer's approval and consent.

Mr. MOSHER. Well, if you bar jurisdictional strikes, the practical effect is, if one of those unions go out on strike, they lose their employee rights whatever they may be. The employer can fill the jobs. And I think you would say that that would wreck the second union, would it not? That is the sort of thing.

The CHAIRMAN. The employer cuts their work down to such an extent that they have practically no strength any more at all. He does it under your proposal. He has the right to say, "Well, that is true, the common workmen have done this work for years and years, but the carpenters say they want it, and I want to stand in with the carpenters, so I will give them all this work, and I will pay nearly twice as much for it." There is no protection at all for the common laborers' union.

Mr. MOSHER. I would have to grant that, in part.

The CHAIRMAN. And, also, you have taken over all plant unions and I think they could very soon oust all craft unions in the plant with proper procedure.

Mr. MOSHER. You would have to have collusion between the employer and the union to do that.

The CHAIRMAN. Not collusion. It is just natural that he wants to stand in with the big union that can do him more harm than the small union.

Mr. MOSHER. I would try to turn your statement around in the opposite direction to say that what happens is that a certain group in a plant decide that they are going to do a certain kind of work, and they hold the whole plant up. You either give in to them, hold the whole plant up, face a strike, or what not.

The CHAIRMAN. All right. You give in to them to prevent it. Then, the other fellow is out on strike regardless of his rights.

Mr. MOSHER. I think we get far astray on our thinking on a good many of these jurisdictional questions. We are inclined to assume employers run the plant in order to beat the union. The employer runs the plant to get efficiency.

The CHAIRMAN. Absolutely.

Mr. MOSHER. If I decide that that kind of work ought to be done by those people, I think, as an employer, I should have the right to make that decision. I am working for the efficiency of a plant. I am trying to get production out.

The CHAIRMAN. Then, I do not see how you can say these people have no right to strike against your decision.

Mr. MOSHER. They have the right to quit work. I do not want to take that away from anybody.

The CHAIRMAN. You want to make the strike illegal.

Mr. MOSHER. I think there is no place in the picture for a jurisdictional strike. I think our practice has pretty well proved that.

The CHAIRMAN. I am in favor of abolishing jurisdictional strikes, but I do not know whether we could ever do it unless we give some impartial body the power to decide who is right in that jurisdiction.

Mr. MOSHER. One suggestion I can go along with a long ways was made a year ago, namely, that the body in Washington—the National Labor Relations Board at the present moment—that determine certification—

The CHAIRMAN (interposing). That could be done.

Mr. MOSHER. Could be given certain jurisdiction. It could be an appeal body to which appeal could be made.

I pause for a moment, because I have not studied the implications of giving the arbitrary authority to that Board in its final decision—having had some experience with the Board.

Senator BALL. It seems to me, Mr. Mosher, that if you left it entirely in the employer's hands, it would be possible, for instance, in the construction industry, that more and more work would be put in the jurisdiction of the common laborers who have the lowest scale, and less and less in the higher-paid mechanics. It certainly would open it up to that if the Board could get away with it.

Mr. MOSHER. Well, we can study all those abuses and draw on our own imaginations for a long ways. I think you and I as common laborers in that situation, being given work hired done by skilled workers, would undertake to see that we got paid for it. So, per-

haps the advantage would only be temporary. I think we would take care of that; would we not?

Senator ELLENDER. Heretofore, has it not been the function of the union itself to tell which union should do that?

Mr. MOSHER. The unions have tried to assume that function, sir, and I am seriously arguing against it.

Senator ELLENDER. I believe if you prevent the jurisdictional strikes, that the unions would be tempted to pattern their future operations in order to prevent that. In other words, it would be more specific as to what Union A shall do and what Union B shall do.

Mr. MOSHER. That is perfectly all right.

Senator ELLENDER. But, I say it would result in that; would it not?

Mr. MOSHER. I think so.

Senator ELLENDER. Surely.

Mr. MOSHER. I think so. I think two unions fighting a battle, which the employer and the public can do nothing about, ought to have to stop it.

Senator ELLENDER. Surely.

Mr. MOSHER. And, I think your idea is a good one.

Senator ELLENDER. It is the function of the union itself to say.

Mr. MOSHER. That is what should happen. Of course, as you well know, some of those things have been going on. A famous one has been going on for nearly 2 years, wrecking—not quite wrecking but causing serious difficulties in a fairly large industry.

The CHAIRMAN. All right, Mr. Mosher.

Mr. MOSHER. On page 18 of the brief we go into insuring majority choice in strikes. I think I have already indicated that we have to preserve the right to strike if we are going to have good-faith collective bargaining over wages, hours, and working conditions, but that right should only be exercised at the conclusion of good-faith collective bargaining, and if the majority of employees in the collective-bargaining unit vote to strike rather than accept the employer's last offer.

Senator BALL. It seems to me, Mr. Mosher, that would be a pretty severe restriction on the right to strike, seeing as how it is pretty tough to get a hundred percent turn-out in any kind of election, and every failure to vote would count as a vote against strike under your proposition.

Mr. MOSHER. I am only asking for a majority of the unit. I am not even asking for 51 percent of the total employees in the plant, though that is my personal opinion.

Senator BALL. As I read your statement, I thought it meant the union.

Mr. MOSHER. The majority of the employees in the collective-bargaining unit.

Senator BALL. Oh.

Mr. MOSHER. That can be as low as 26 percent in the plant.

Senator BALL. In the unit?

Mr. MOSHER. In the unit.

Senator BALL. I say that still means any employee who fails to vote would be a vote against strike. If a union has 51 percent and they vote 90 percent to strike, they could not strike under your provision—

that is, union members—because the unorganized members could out-vote them just by staying away from the polls.

It seems to me if you eliminate the closed shop and industry-wide bargaining, that you could leave the union free. You put a sufficient check on arbitrary leadership's decisions without any reference to what the rank and file thinks, if you get rid of secondary boycotts and the closed shop. I do not like to have the Government go in and supervise elections and all that business. It seems to me it is headed in the direction of intervention. You eliminate the closed shop and leadership is going to be a little more careful about calling a strike unless they are pretty sure they have the men back of them.

Mr. MOSIER. May I make a general observation? If you dovetail all these various things, you can relieve the pressure on certain ones if the others receive the most attention. No one of these things is going to accomplish what we have in mind, and if you do any one of these things we advocate, and if that is all you do, you will not help the situation a bit. You will make it worse. All of these things have to be dovetailed to a reasonable degree.

I agree, we do not want to have the Government stepping in and holding these strike votes and that sort of thing. At the same time I submit that in an ordinary vote, such a vote as I propose in a plant to make sure that the employees back up that situation, is an important one.

I had one case of my own where our offer to the union never reached the union.

Let us just stop for a minute and look at what happens in an ordinary collective-bargaining negotiation. This is the practice, not the law or the regulation. The union insists that we in management have the authority to speak for management when we go into a negotiation. On the other hand, the unions insist that they have the right to go back to their membership to get approval of what they do. Now, if they are going to insist that they have a right to go back to their union membership for approval of what they have agreed with us in management to do, I submit it is perfectly fair that they be asked to ask their people if the people want to go on strike at that time.

Do I make my point clear?

Senator BALL. Yes. But how can you enforce that sort of a requirement without having some Federal agency supervise those strike votes?

Mr. MOSER. Well, I think the way it will work out in most cases will be if they do not win the vote the strike will not be held. It will mean that the people do not want the strike, regardless of what the union leaders may think. The strike would not be held.

The CHAIRMAN. But, our complaint has been that if the Government does not go in and supervise it that the strike votes are largely faked or under compulsion of one sort or another, that the votes are not secret, not really secret even if they purport to be. So it seems to me that Senator Ball's question is necessary. It seems to me if you are going to do it at all you have to provide for Government control the way we did in the Smith-Connally votes.

My question is whether this difference of shifting the vote from early to late is going to make the whole result any different from the

Smith-Connally result, which was generally thought to be just a waste of money on the part of the Government.

Mr. MOSHER. I think the Smith-Connally vote was not only a waste of money but created a worse situation than we would have had without it.

The CHAIRMAN. You think all the difference would be if we shift from an early to a late vote? You think there would be an entirely different result from Smith-Connally Act?

Mr. MOSHER. I think so. Frankly, my premise is if we do many of these things we will cut this strike epidemic down to a very small volume. Certainly if we get back to the strike volume that we had before the Wagner Act it would be a millennium compared to what we have had since it.

We go into some details as to strikes that were called without negotiations, and I am sure you are all familiar with that situation.

On page 19 we go into the source of coercive power, which, frankly, is the closed shop.

Now I have called your attention to unjustified strikes and strikes called without authorization of the majority of the employees involved. Those strikes spring out of union strategy, not out of the need of the employees, and they are forced upon unwilling employees by the compulsory power of the union itself.

When an employee is required to join a union or maintain his membership in the union in good standing as a condition of employment, he loses the right of choice both as a member of the union and as an employee, and as a citizen, if you please. He has to slavishly follow the instructions of union leaders on pain of losing his job. Efficient production is difficult, in many cases it is impossible, when the employee's first concern is to the union rather than to the efficiency of his own work or the instructions of his employer.

Shop discipline becomes secondary to union discipline. Not the least of the tyrannies of the closed shop is that under it the employee loses the democratic right to oppose union policies and tactics which he considers unwise or improper.

I would like to emphasize that particular one.

With the dictatorial power of the closed shop, union leaders are able to coerce union members to strike when there is no dispute with their employer and to participate in activities that are far removed from any ordinary collective bargaining.

There have been proposals that the closed shop be permitted or even made mandatory when a majority of the employees favor the closed shop. I want to emphasize and set forth clearly that my opposition to the closed shop is very definite even though the employer and the employees all favor it. The protection of a minority should be absolute and not rest upon the decision of the majority.

The CHAIRMAN. Mr. Mosher, one thing I am interested in is how far you go in the closed shop in trying to eliminate it. Of course we could provide as we do about yellow-dog contracts that a contract for a closed shop should be invalid.

Mr. MOSHER. Yes, sir.

The CHAIRMAN. But take the question of the building industry where they have had a closed shop more or less for 50 years. It has

been suggested to me that if you did prohibit the contract it would not make any difference. Even though it was not in the contract when the union carpenters arrived on the job and found a nonunion carpenter working, they would all quit. Of course, the building industry is a little different from others. But how far would you then go? Would you say that was an illegal strike?

Mr. MOSHER. I would say it was an illegal strike, and as an employer I should be allowed to hire more carpenters. I recognize today that because of the unions we do not have any carpenters. We all know that.

The CHAIRMAN. What are we going to do about that?

Mr. MOSHER. So conditions at the moment are pretty tough, and I probably could not do that at the moment.

The CHAIRMAN. What are we going to do about that? Are we going to say that is illegal—and do what as a result of saying it is illegal? What would be your proposed penalty on the men who walked out?

Mr. MOSHER. Their rights under the Wagner Act to be regarded as employees should be taken away from them.

The CHAIRMAN. That probably would not hurt them very much, either.

Mr. MOSHER. Not at the moment. It would not hurt them so long as there are no carpenters. I will be realistic about it.

The CHAIRMAN. Then, of course, it is the question of stopping something that has been going on for 50 years, or 100 years, as far as I know. It is no recent development in the labor field.

Mr. MOSHER. No. Of course, it is mentioned by many that because these things have been in existence that we ought to continue them. It seems to me that, as I go back in my own experience, that business as a whole has had to change its way of doing business from time to time when laws were passed, although we had been doing business that way. I am thinking of certain actions on the part of the Department of Justice under the Clayton and Sherman Acts.

In other words, I am frankly very cold to the suggestion that is made that because things have been done that way they have to be continued that way. Business management has not been allowed to function that way. I do not have to mention anything but a holding-company situation. I hold no brief for whether that is good or bad. I am just pointing out that when things are determined to be bad for the public interest we should not hesitate to change them, regardless of the situations that have existed in the past.

The CHAIRMAN. How much good would it do, apart from supposing that we do not try to interfere with that particular thing—or cannot, as you suggest, under the present condition—to just prohibit the making of new contracts of that sort? Would that do some good?

Mr. MOSHER. That is a very effective way to handle it. It does not create those calendar dates that we all have to meet. To say that no new contract could be made carrying those provisions I think is a very effective way to do it.

The CHAIRMAN. You think that accomplishes some part of the job anyway?

MR. MOSHER. I would not suggest and I do not suggest that a law be passed barring closed shops tomorrow night or 3 months from tomorrow night. Maybe a year from tomorrow night. A very effective way is to allow existing contracts to run out so as to not disturb many situations that work very well.

THE CHAIRMAN. Let me ask one other thing. There have been some employers I think and certainly some labor relations people, who have suggested that we might say that this shall not be a subject of collective bargaining but that an employer may make a closed-shop agreement if he wishes to do it. What do you think of that proposal?

MR. MOSHER. That does not remove my fundamental objection to a closed shop. As a matter of fact, I may say that for a long time I have not regarded closed shops as bad per se, any more than I have regarded monopoly as bad per se. But men being what they are, so many abuses have grown up in both of those situations, that we all now with few exceptions regard business monopolies as bad.

In the same light, I say that a union monopoly is bad. Under the only way it appears to function or appears as though it could function, the closed shop creates a monopoly.

Now, what do you get out of it? You get a combination of employer and union for which the public pays the bill. We need no better example than the building industry which have priced themselves out of the market.

SENATOR ELLENDER. You fundamentally are opposed, as you have indicated, to closed shops. But, if you had to select a method of dealing with them in order to—I will not say outlaw them altogether, but make it so there would be more of that freedom to which you refer—then suppose we were to restore to management the freedom of speech and correct all these evils that you were talking about; and suppose also we go a step further and outlaw strikes where the sole basis would be a closed shop, do you think that this solution would take care of the situation?

MR. MOSHER. I think that certainly ought to be done anyhow, but I still leave that same point I was trying to make a moment ago, that I think fundamentally one of the worst situations in the closed-shop situation is the combination between employer and unions, for which the public pays altogether too high a price.

SENATOR ELLENDER. We have heard testimony produced here during the last 3 or 4 weeks to the effect that some do want it. What I would like to do is make it so workable that those who want it can have it.

MR. MOSHER. Well, of course, I think we are together up to that point. I cannot go with you on that point because of certain abuses I know exist. I know of employers, and, as I said a moment ago, I do not condemn a closed shop per se, but I say that the abuses that have grown up around the institution leave me in the position of saying I do not know of any way to correct it except abolish the closed shop.

Now the employers and the unions that want it, and we can quote cases for a long time where very pleasant, harmonious relationships exist. I might submit that we might take a look at the price schedule that the public pays. We might take a look at what happens to the

union member when he loses his card. He starves to death. That is what happened in one case I know of in what is considered to be the best example of a closed shop.

On page 21 of the brief we go into equity and efficiency, and we cover the equality of obligations to bargain. We cover equal responsibilities for living up to the contracts, and we cover freedom of speech.

I hope I am not presuming when I make the statement that I do not think there can be much difference of opinion between us on those three points.

Of course, you cannot conduct collective bargaining unless there is an equality of responsibility and an equality of obligation. The obligation to bargain collectively should be imposed on both sides—on one as it is on the other.

Senator ELLENDER. How would you do that?

Mr. MOSHER. Amend the Wagner Act to provide that unions should be obligated to bargain collectively, the same as employers are.

Senator ELLENDER. How about a specific provision in the law forcing both management and labor to signify that it shall?

Mr. MOSHER. I think that is the way to do it, sir.

Now the obligation to live up to a collective-bargaining agreement ought to bear with equal weight on both sides. The right to speak freely and fully, as you expressed a few moments ago, except for intimidation and coercion, which ought to be barred to both people. There should be free communication so that we can have good understanding.

I hope that those items are so self-evident that there is not much room for difference of opinion.

On page 25 we touch on force and violence. I suggest that just as employees should be free from coercion and intimidation by employers in their choice of collective bargaining agent, they should be free from union coercion and intimidation too. That comes into the closed-shop picture. Also the control of the individual by a union group.

The right of an employee to work at an available job of his choice must not be vitiated by mass picketing or any other form of coercion or intimidation; neither should any group be permitted to molest the individual employee or his family at home or at work, or interfere with his movements, as is being repeatedly done.

Senator ELLENDER. In the case of violence, do you recommend that there should be a Federal statute on the subject, or would you let it be handled by the local authorities?

Mr. MOSHER. I think a Federal statute, as long as we have this type of Federal legislation, should make the point clear. I think the enforcing agency should be the local police. Then we get into some real practical difficulties.

Senator ELLENDER. Under local laws, I presume. They would have to operate under local laws?

Mr. MOSHER. Under local laws.

The CHAIRMAN. As I get your suggestion, it is that men engaging in violence be deprived of their rights under the Wagner Act. Is that right?

Mr. MOSHER. Yes, sir.

Protection of individual rights, as I intended to go on to say, and as I have already said, is primarily a task for local law-enforcement agencies. However, when local law enforcement breaks down, the Federal Government should be in a position to step in to preserve law and order.

Senator ELLENDER. They usually do if the local people cannot handle it. They call on the Federal Government or the militia.

The CHAIRMAN. The governor.

Mr. MOSHER. I want to say I cannot go along with you on that word "usually."

Senator ELLENDER. Our history has been that way.

Mr. MOSHER. Time and again interpretations of the Norris-LaGuardia Act have permitted unlimited violence to continue. That act should be clarified to permit the Federal courts to prevent that kind of activity.

On page 26 we mention managerial responsibilities. If management is to be able to discharge its functions of efficient production and its collective-bargaining responsibilities, it has to be certain that its orders will be carried out by its foremen. Management cannot be certain of this if it is obliged to argue collectively with foremen.

The definition of an employee in the National Labor Relations Act should be amended to make it clear that no part of management is included in the term "employee," so at least management will not be placed in the ludicrous position of having to bargain with itself.

I have covered the brief, and I have just a few closing comments.

All I have said can be summed up in one sentence: Remove the external obstacles between management and its employees, and they will determine their own relationships peacefully and effectively.

Those obstacles are:

1. Government intervention.
2. Industry-wide bargaining and secondary boycotts.
3. Strikes which are not based upon the legitimate interests of the employees and that are promoted by compulsory unionism.
4. Inequity between management and labor under the present law.

They are simple, basic, fundamental issues. If those obstacles are removed, I for one am confident that you will get reasonable labor peace.

I think at the same time that the interests of labor and management both will be fully protected and, what is more important, all the public will receive the benefit of efficient production and industrial peace.

Then, I want to mention one thing with a little fear and trembling. I think if Congress undertakes such a program, there is no question about universal support from the whole country. The program is not punitive, as I have suggested. It is not restrictive. It is based upon the sound foundation of public welfare. It is the surest antidote to class warfare we have had for some years, for it does not set up one class against another. It does not favor one group against another. It does not put the Government on the side of either labor or of management. It puts the Government where it ought to be—in the role of guardian of the public interest, under our system of free competitive enterprise, free labor, and democratic government.

Senator ELLENDER. Mr. Mosher, I did not notice whether you covered in the brief the question of welfare funds. I presume you are against that being made a part of collective bargaining.

Mr. MOSHER. I do not think a welfare fund should be a proper subject of collective bargaining. I am definitely against the imposition of any royalty on any production. I see no reason why, if welfare funds are created—and I am a strong advocate, if you please, sir, of welfare funds—

Senator ELLENDER. How would you handle it?

Mr. MOSHER. I think that if the employer wants to set up a welfare fund—

Senator ELLENDER. That is on a voluntary basis?

Mr. MOSHER. That he should be allowed to do so. I do not think it is a proper subject for collective bargaining. I think that any welfare fund set up should be managed the same as insurance programs are managed. It is essentially an insurance program.

Senator ELLENDER. On a voluntary basis?

Mr. MOSHER. On a wholly voluntary basis.

Senator ELLENDER. You would not favor management and labor formulating some method legally by which these welfare funds would be created?

Mr. MOSHER. I would not ban that.

Senator ELLENDER. Along the social-security line?

Mr. MOSHER. I do not think an employee should be in a position to say to an employer, "You set up a welfare fund or I will not bargain." I am referring to one case, of course. I do not think it is proper subject for calling a strike. I do think that welfare funds should be set up if employers want to set them up alone, and they have been barred from setting them up in some cases by the union.

Senator ELLENDER. Very few do it.

Mr. MOSHER. Do it alone?

Senator ELLENDER. Yes.

Mr. MOSHER. Oh, yes; thousands of them do it. There have been a tremendous number of welfare funds. Our files are full of them. We have studies in our files on the subject.

Senator ELLENDER. Since this has been a bone of contention and caused a lot of labor unrest, and the fact that labor wants some kind of security, do you not think it would be advisable for Congress to provide some way by which all concerns would be obligated to create some kind of welfare fund?

Mr. MOSHER. Well, that depends on what you are covering, Senator Ellender. I am very fearful of congressional activities along these welfare lines. If we stop to consider what these things cost now, we are getting into the realm of social-welfare legislation about which I claim no special knowledge.

I just want to add one thought—that in the creation of welfare funds they should be subject to ordinary insurance regulations as are the insurance companies, and the insurance companies carry the bulk of them today.

Senator ELLENDER. I think if Congress could pass some reasonable method of creating such funds, that it would do away with a lot of trouble.

Mr. MOSHER. Is that not fundamentally part of the general social security welfare program, rather than labor-management?

Senator ELLENDER. I agree with that. And, personally, I do not think it ought to be made the subject of collective bargaining. I want it out of that. But, at the same time, I think Congress ought to do something by which welfare funds could be created and force all of them to adopt it.

Now, whether it is to be done through social security or not, I do not know. But that would be a problem for future study, probably, of this committee.

Mr. MOSHER. I think it is fundamentally a social-welfare problem—not a labor-management problem.

I might for the record state that information has been given me there are 12,000,000 employees covered by insurance and other welfare programs, as far as we can determine at the present moment; that is, 12,000,000 in all industry, according to our figures.

The CHAIRMAN. Thank you, Mr. Mosher, for a clear presentation. (Mr. Mosher submitted the following statement:)

STATEMENT OF IRA MOSHER, CHAIRMAN, EXECUTIVE COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS, BEFORE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, FEBRUARY 15, 1947

My name is Ira Mosher. I am chairman of the NAM Executive Committee and vice chairman of the NAM Legislative Policy Committee. I come here as the representative for the National Association of Manufacturers, which has a membership of 16,500 manufacturing companies, who employ 75 percent of the manufacturing employees of the Nation. Most of these companies, in fact, three-fourths of them, are small and medium-sized firms, employing 500 or less. I should like to emphasize this fact because it is the many thousands and thousands of small companies which have suffered most from the situation we are here to correct.

In testifying today, at your invitation, I come before you as the authorized spokesman of the NAM, rather than as a single industrialist, to present the program of basic principles that the association believes must be reflected in the national labor policy, through legislation, if we are to fulfill our responsibility toward the Nation and move forward toward enduring industrial peace. Should I make any statements here as an individual, I shall make it clear that they are my personal views.

The program I want to lay before you is based upon the conviction that neither free competitive enterprise nor free labor can long endure if management and labor persist in putting selfish interests ahead of the interests of the public. We base our program on the theory that what is good for the public is good for business. What is bad for the public is bad for business. We seek neither special favors nor immunities; nor do we seek punitive measures against other groups.

Our program was not born yesterday. It has been many years in various stages of development. Reexamination of our labor policy began early last year, when the scourge of strikes and violence was at its height and when the whole Nation was in the grip of a well-nigh complete economic paralysis resulting from the first coal strike, the steel shut-down, the automobile strikes, the railroad strike, break-down of communications, transportation, and utility services in many cities. Our program was finally adopted at the very time when the Nation was prostrated again by the second coal strike.

As you will remember, proposals of an extreme and drastic nature were proposed from all quarters. There were demands that all strikes be outlawed; that strikers be drafted into the Army, which—incidentally—had the support of President Truman. There were demands for compulsory arbitration.

Despite these extreme demands, manufacturers as a whole, as exemplified in the NAM membership, brought to this task of policy-shaping a very high sense of their responsibility toward the American people. Industry believed

that this was a time that demanded industrial statesmanship. Conscious of the very real sense of responsibility due the Nation in an issue of such transcendental importance, the NAM realized there was only one sound course to take—and that was to conceive a Federal labor policy designed to serve the best interests of all the people, not the selfish interests of any one group, be it management or labor.

I should like to give you a factual picture of how this program came into being so that you may understand the full democratic process that gave it birth.

The NAM was not satisfied to stand on its previous programs resulting from years of study. As wave after wave of strikes swept the country, and the public's demand for a solution became more insistent, the NAM, in committee deliberations spreading over the period of a year, shaped and refined its labor policy through full democratic debate at every step of the policy-making procedure. As long ago as early last year, discussions and research by the staff got under way to prepare for the broad study to be made by the industrial relations program committee, which is composed of 40 industrial leaders representing many different types of industry, both large and small, and embracing many different geographic problems and viewpoints.

Participating in the committee counsels, and part of this policy-making machinery were representatives of the 330 employer associations affiliated with the National Industrial Council, which represents a combined total membership of approximately 40,000 employers throughout the Nation.

The labor program began to take shape in a series of meetings that were noteworthy for the breadth of discussion given to every aspect of the many-sided and complicated problem of developing a national labor policy that would serve the country best. When the industrial relations program committee completed its draft of recommendations, they were put into the hands of the NAM executive committee, where the same exhaustive process began anew. Revised and refined again, the recommendations then went before the NAM board of directors of over 140 members, for final scrutiny and vote.

While it is difficult to give an accurate account of the number of members who participated directly and indirectly in the year-long policy-making procedure, it is safe to say that it represented the combined thinking and judgment of hundreds of employers, who were thoroughly conversant, through their own plant and company experience, with both the human relations and technical problems of collective bargaining and labor-management relations.

During the development and refinement of this program, we turned down all proposals that smacked of reprisals against unions and would deprive labor of its proper and rightful gains. We do not seek to put the employee at a disadvantage in collective bargaining. Any such program would be disastrous to the country. We do not choose to follow that road. What we ask of Congress is the enactment of a legal framework that will put in true balance the rights and responsibilities of labor and management, in order that they may be free to work out their problems in their common interest, with due regard for the rights of the individual and of the public.

That is the kind of program that the National Association of Manufacturers was reaching for when on December 3, 1946, the board of directors adopted the following as the "Basic Principles Behind Good Employee Relations and Sound Collective Bargaining." We earnestly submit these "basic principles" as the only foundation for legislation which will bring to this country a permanent condition of industrial peace.

THE BASIC PRINCIPLES BEHIND GOOD EMPLOYEE RELATIONS AND SOUND COLLECTIVE BARGAINING

To develop sound and friendly relations with employees, to minimize the number and extent of industrial disputes, and to assure more and better goods at lower prices to more people, American employers should see that their policies encourage:

- (a) High wages based on high productivity, with incentive to encourage superior performance and output;
- (b) Working conditions that safeguard the health, dignity, and self-respect of the individual employee;

(c) Employment that is stabilized to as great a degree as possible, through intelligent direction of all the factors that are under management's control;

(d) A spirit of cooperation between employees and the management, through explanation to employees of the policies, problems, and prospects of the company.

The right of employees to join or not to join a union should be protected by law. In exercising the right to organize in unions or the right not to organize, employees should be protected by law against coercion from any source.

When the collective bargaining relationship has been established, both employers and employees, quite aside from their legal obligations and rights, should work sincerely to make such bargaining effective. Collective bargaining should be free from the abuses which now destroy its benefits. It is believed that the abuses of collective bargaining will gradually disappear if both management and labor will adhere to the following principles:

1. The union as well as the employer should be obligated, by law, to bargain collectively in good faith, provided that a majority of the employees in the appropriate unit wish to be represented by the union.

2. The union as well as the employer should be obligated, by law, to adhere to the terms of collective bargaining agreements. Collective bargaining agreements should provide that disputes arising over the meaning or interpretation of a provision should be settled by peaceful procedures.

3. Monopolistic practices in restraint of trade are inherently contrary to the public interest, and should be prohibited to labor unions as well as to employers. It is just as contrary to the public interest for a union or unions representing the employees of two or more employers to take joint wage action or engage in other monopolistic practices as it is for two or more employers to take joint price action or engage in other monopolistic practices.

4. If a legitimate difference of opinion over wages, hours or working conditions cannot be reconciled through collective bargaining or mediation, employees should be free to strike where such strike is not in violation of an existing agreement. However, the protection of law should be extended to strikers only when the majority of employees in the bargaining unit, by secret ballot under impartial supervision, have voted for a strike in preference to acceptance of the latest offer of the employer. Employees and employers, should both be protected in their right to express their respective positions.

5. No strike should have the protection of law if it involves issues which do not relate to wages, hours or working conditions, or demands which the employer is powerless to grant. Such issues and demands are involved in jurisdictional strikes, sympathy strikes, strikes against the Government, strikes to force employers to ignore or violate the law, strikes to force recognition of an uncertified union, strikes to enforce feather-bedding or other work—restrictive demands, or secondary boycotts.

6. No individual should be deprived of his right to work at an available job, nor should anybody be permitted to harm or injure the employee, or his family, or his property, at home, at work or elsewhere. Mass picketing and any other form of coercion or intimidation should be prohibited.

7. Employers should not be required to bargain collectively with foremen or other representatives of management.

8. No employee or prospective employee should be required to join or to refrain from joining a union, or to maintain or withdraw its membership in a union, as a condition of employment. Compulsory union membership and interference with voluntary union membership both should be prohibited by law.

9. Biased laws and biased administration of laws have made a contribution to current difficulties, and should be replaced with impartial administration of improved laws primarily designed to advance the interests of the whole public while still safeguarding the rights of all employees. The preservation of free collective bargaining demands that government intervention in labor disputes be reduced to an absolute minimum. The full extent of government participation in labor disputes should be to make available competent and impartial conciliators.

Compulsory arbitration, in particular, is inconsistent with American ideals of individual freedom, and is bound to destroy genuine collective bargaining.

All labor and related legislation should be consistent with the principles set forth above. Any existing statutes that are in violation of such principles should be brought into accord with them through appropriate action by the Congress.

These are the basic principles. Principles are necessarily rather general and abstract. What I should like to do is to show you the industrial reality underlying these principles. On the basis of a lifetime in industry, I should like to show you the concrete application of these principles in the fundamental relationship between management and its employees.

I have a deep-rooted conviction of the essential decency of the men who compose both the labor and management sides of the industrial team. It is that essential decency which has made it possible for us to survive, despite the one-sided legislation now on the books—legislation which is discriminatory and which has been administered in a partisan manner.

In brief, the entire program outlined above is rooted in the knowledge that management and its employees can join together to regulate their relationships if we take steps to remove those external and arbitrary obstacles which interfere with a sound relationship between them. Speaking broadly, these external obstacles can be classified in the following categories:

1. Government intervention, whether it be through compulsory arbitration, permanent mediation boards, or politically directed fact-finding.
2. The external influence of industry-wide bargaining and of secondary boycotts.
3. The conflict between union objectives and the best interests of the employees, as evidenced by strikes which cannot improve the status of the employees, which are promulgated without giving the employees a chance to vote on them and which are forced upon the employees through compulsory unionism.
4. The inequities resulting from one-sided obligations and responsibilities under existing laws.

From what I have indicated above, it is clear that the basic idea which underlies the program that NAM submits for your consideration is this: Satisfactory and harmonious relations between employers and employees must be developed and strengthened at the plant and company levels, where the human relationship is so all-important and where employers and employees have their day-by-day dealings against the background of common problems, common interests, and a common understanding of the situations facing them.

Experience has shown that when this daily relationship is thwarted because of outside factors that have little or no direct bearing on the particular plant or company, a feeling of mistrust, insecurity, and often antagonism begins to manifest itself.

What I am going to say now is so obvious that it needs no saying, but I think it is important that we bear it in mind: Employees and employers are essentially the same breed of normal human beings. They are motivated by the same fundamental sense of fair play and idealism, as well as the normal degree of self-interest and selfishness, that motivates human beings in general. Contrary to some fanciful impressions, employers have an innate interest in and high sense of responsibility for the welfare of their workers, although this must be balanced against their corresponding responsibilities to their customers, stockholders, and the consuming public. At the same time, employees have a fundamental sense of identification with the company for which they work, tempered only by their understandable concern for the standards of living and welfare of themselves and their families.

Both of these groups—employers as well as employees—have an inherent desire to work out mutually satisfactory conditions of employment. They have a natural interest in each other and a common interest in the company and its progress. As with all groups where common interests tie them together, there is some friction and bickering, but over and above these minor irritants is the larger feeling of “togetherness” that employers and employees wish strongly to maintain. They wish to be free to work out their problems at the plant or company level where the solutions will be of their own making and will meet their respective needs.

Please understand me, what I have said does not in any sense seek to discredit unions or their proper and legitimate activities in representing the interests of employees at the plant or company level. On the contrary—and I

cannot say this too emphatically—American industry has accepted the concept of free collective bargaining as the basis for better employer-employee relations and the way to industrial peace and harmony, where employees have freely chosen that course.

Our problem lies in the fact that free and effective collective bargaining cannot take place because external obstacles have been interposed between management and employees; and because balance—equity—responsibility are lacking in our labor laws. The twin doctrines of equity and of responsibility for all citizens and all groups are basic to American democracy. These doctrines must become part of the national labor policy and external obstacles must be removed if the Nation's faith in collective bargaining as the road to industrial peace is to be realized.

EXTERNAL INTERFERENCE WITH GOOD LABOR RELATIONS

What we propose is not reprisal, not punitive legislation, not the destruction or weakening of organized labor. What we propose is the creation of the kind of environment in which management and labor can meet and discuss and solve their problems without external interference.

The chief cause of external interference between labor and management—and one which is being sponsored with the best of intentions—is the danger of Government intervention by way of compulsory arbitration, labor courts, permanent Federal mediation boards, and politically controlled fact-finding boards.

In order that we may appreciate the extent and effect of Government intervention it is necessary to define the term "collective bargaining." I think of collective bargaining as the process by which management and voluntarily selected representatives of its employees deal with each other in order to (1) arrive at agreed-upon wages, hours, and working conditions, and (2) live under that agreement during its existence.

In order that collective bargaining may be conducted peacefully, effectively, and fairly, management and representatives of the employees should be free to act in their own self-interest, rather than be guided by orders from above or by ideological programs which have little to do with the welfare of the business or of the employees.

Furthermore, the area of collective bargaining should be clearly defined so that both sides may know what is appropriate subject matter for collective bargaining and what is not. If those things which management must be able to decide in order to discharge its obligation to direct the business—if those things are subjected to the vagaries of collective bargaining, the efficiency of operation, and the success of the business, and the jobs of the employees are in danger. If what we mean by "wages" today becomes something else tomorrow, as is true with some interpretations under the wage-hour law, collective bargaining cannot be successful. For example, an employer who wants to show his appreciation to his employees by paying them a bonus or even a share of his profits suddenly discovers that by so doing he has changed their "regular rate" and has thereby acquired a considerable retroactive liability for overtime pay. In a thousand and one ways Government intervention interferes with good labor relations and interferes with sound collective bargaining.

Government determination of conditions of employment.

We hear much about genuine collective bargaining as the solution of industrial disputes. Yet many of those who render lip service to collective bargaining at the same time urge that when disputes do arise the Government must rush in to settle the dispute. It little matters whether the Government intervene by way of compulsory arbitration or by labor courts. If the Government assumes the prerogative of determining employment conditions that are in dispute we may as well give up the pretense of trying to attain industrial peace by collective bargaining.

Collective-bargaining disputes are different from other disputes which are governed by pertinent law or contract. If a man trespasses on my property I can take him to court, and the judge can rule on the dispute because there is a law against trespass. If I agree to buy a radio and then refuse to pay the full price the radio dealer can take me to court and get satisfaction because I have failed to live up to my agreement.

But when labor and management are unable to agree upon the terms of a new agreement there is no applicable law nor is there an agreement to interpret. It is as if I decided I want to buy a house from John Brown and want to pay him \$15,000 for it, but John Brown doesn't want to sell his house. Should I have the right to take John Brown to court and have the court determine (1) whether Brown should sell me his house, (2) what I should pay for the house, and (3) what are the terms of payment, mortgage conditions, etc., that will determine the transaction? This is the kind of problem you face when you say "let there be a labor court or some other tribunal to determine disputes between labor and management."

We know by experience that if we provide for compulsory arbitration the incentive to bargain collectively is destroyed. One side or the other or both may decide that since the board or court will make the final decision anyway there is not much use in their bargaining in good faith. More than that, each side will be wary of making any concessions, because such concessions would then become the starting point from which the court or board would make its decision. We have only to recall the unhappy 1945 petroleum-refinery strike, in which the Government, through the Secretary of Labor, urged that after certain companies had agreed to a 15-percent wage increase the parties submit to arbitration the question how much over and above the 15-percent wage increase should be ordered.

Those who urge compulsory arbitration tribunals consider them as impartial third parties who are above the conflict of interests of the participants in a labor dispute. We must recognize, however, that Government arbitration tribunals are subject to political pressures which have little or nothing to do with the merits of the dispute. Furthermore, it does not take much study of arbitration disputes to come to the conclusion that arbitration almost invariably compromise the demands of the parties rather than determine which of the two parties is right. This tendency to compromise, of course, encourages the parties to make more and more arbitrary demands so that the compromise will give them more of what they hope to get.

There is a fundamental problem here. When the parties are compelled to submit their dispute to an outside agency, the controversy is withdrawn from the jurisdiction of the two parties concerned and placed in hands less familiar with the conditions and problems involved. Consequently, the final decision is less likely to satisfy either the employer or employees.

Over and above these basic objectives to compulsory arbitration, it is clear that compulsory arbitration leads directly to Government imposition of the terms and conditions of employment. This leads to control of prices, markets, and expansion, until we have complete Government control of the entire economy.

I believe that the Congress is as much concerned as I am about preserving our system of free competitive enterprise and political democracy. If we are to abandon this system in favor of some form of state socialism, let us by all means do so with our eyes open and on the merits of that kind of system, rather than let ourselves be maneuvered into it under the guise of solving labor-management disputes.

Finally, compulsory arbitration offers no real assurance of peaceful adjustment of disputes. External compulsion does not eliminate misunderstandings or resolve conflicts. Unless we go to the root of the dispute and solve it on its merits as only the parties involved can solve it, compulsory arbitration can result only in a temporary truce. Where compulsory arbitration has been tried it has not prevented strikes.

Even in time of war and under the stress of the compulsions of national survival and patriotism, the compulsory arbitration of the National War Labor Board did not serve to keep the country free of strikes even when supplemented by labor's pledge not to strike. Certainly the attempt to impose compulsory arbitration in peacetime can only result in intensifying industrial unrest and encouraging strikes against the Government.

Both labor and management oppose compulsory arbitration because it is unsound in principle and has failed in practice. The preservation of free trade-unions, free management, and competitive enterprise depends upon safeguarding collective bargaining and eliminating Government compulsion.

Fact finding

The theory of fact finding stems from the sound premise that the parties are more likely to reach agreement if disputes as to the facts are resolved by an

impartial board determining what the facts are. Unfortunately, that is not the way that fact finding has been used. It was presented to the country as the long-sought answer to industrial disputes. It was then used by the administration, not to find the facts, but to impose a preconceived wage pattern upon the country. Taking into consideration all kinds of unrelated circumstances in various industries, fact-finding boards come up with one unanimous and inescapable fact—industry must grant an 18½-cent wage increase. That was not fact finding. That was thoroughly unjustifiable Government intervention for wage-fixing purposes. The theoretical advantages of fact finding have, therefore, been destroyed because in practice fact finding has been discredited by a disillusioned public.

Where fact finding is accompanied by recommendations, it has some of the attributes of compulsory arbitration. I agree with the conclusions set forth in a CIO publication, *The Economic Outlook*, in January 1946.

"[Fact finding] seeks to compel the parties to a dispute to accept the findings of governmental bodies. Every sort of pressure and power the Government could bring to bear would be mustered against a union or management which for any reason did not wish to accept the decision of the fact-finding board. It would thrust the Government into the field of collective bargaining and would immediately cramp and undermine the normal operation of union-management relations. Even when one party has convinced the other that it has a legitimate demand, the second party will be tempted to turn it down, and force the issue before a fact-finding board, with the hope that such a board won't award the entire demand. It is precisely the state of mind bred by this type of Government interference which leads to the break-down of the normal functioning of collective bargaining."

Among other objections to fact finding is the fact, gathered from previous experience, that fact-finding boards do not confine themselves to the mere determination of facts, but predicate their recommendations on suppositions, assumptions, forecasts, and prognostication as to what may happen.

Federal mediation boards

Mediation boards, like fact-finding, depend upon the theory that a third party can be of some assistance in sifting the facts and in urging the parties to reach a reasonable common ground. Unfortunately, in practice, permanent mediation boards are subject to even more objections than are fact-finding boards.

When you create a permanent mediation board, it is natural that the board should start looking for business. It is bound to get into disputes where it is invited and into disputes when it is not invited. It stores up a large body of precedents which are likely to be applied to subsequent cases whether conditions are the same or not. As in the case of compulsory arbitration, the parties are encouraged to by-pass their collective bargaining responsibilities and to send their dispute to the mediation board for decision. The possibility of Government interference destroys the spirit of mutual give and take, and political maneuvers replace a discussion of the industrial realities.

The creation of permanent mediation boards encourages an ever greater participation of Government personnel in labor relations. Ever more personnel and functions are added to the Board until it becomes a huge and unwieldy bureaucracy.

The cooling-off period provided for in some of the proposals for mediation boards can make little contribution to industrial peace. There is some merit in the contention that the cooling-off periods are converted into warming-up periods. If the unions choose not to observe the cooling-off period, its enforcement becomes difficult, particularly under present conditions where there is no legal obligation on the union to bargain collectively or to observe its agreements.

Conciliation

My comments concerning Government intervention as a deterrent to collective bargaining do not apply in the case of Federal conciliation. I believe it is sound for the Government to maintain an adequate staff of competent, experienced, impartial conciliators who may be called in to assist in pending negotiations or disputes by either or both parties. Such conciliators, if competent, trustworthy, and impartial can help a great deal in maintaining industrial peace. At the same time, the availability of these conciliators does not mini-

mize the responsibility of the parties to achieve a satisfactory agreement through genuine collective bargaining.

During the past year, the Conciliation Service has made important strides in the direction of providing that kind of conciliation. The members of the Labor-Management Advisory Committee to the Conciliation Service have performed a useful and valuable function in achieving a better understanding between the Conciliation Service and labor and management. I would like to see that kind of service and cooperative relations extended and strengthened.

Useful and valuable as the Federal Conciliation Service is, I believe everything possible should be done to encourage States and municipalities to provide local conciliation services so that negotiations and disputes may be settled as close as possible to the local level without calling upon the Federal Government.

Let Government provide an adequate conciliation service and leave the rest to the parties themselves under a framework of equitable laws impartially administered. We will not eliminate all strikes. But we will so restrict the incidence and magnitude of strikes that when they occur, they can be written off as the cost of liberty under law.

That is the philosophy underlying NAM's principle that "Biased laws and biased administration of laws have made a contribution to current difficulties, and should be replaced with impartial administration of improved laws primarily designed to advance the interests of the whole public while still safeguarding the rights of all employees. The preservation of free collective bargaining demands that Government intervention in labor disputes be reduced to an absolute minimum. The full extent of Government participation in labor disputes should be to make available competent and impartial conciliators. Compulsory arbitration, in particular, is inconsistent with American ideals of individual freedom, and is bound to destroy genuine collective bargaining."

Voluntary arbitration of questions of interpretation

Despite the sound and valid objections to compulsory arbitration, I do not want to give the impression that there is no place for arbitration in collective bargaining. Once the parties have reached agreement, there is no reason why they should not resolve any dispute concerning the meaning of that agreement by submitting it to a competent arbitrator. In this case the arbitrator does not determine for the parties what their employment relations shall be. He simply interprets the agreement which they have both signed. It is becoming more and more common for the parties to include in their collective bargaining agreement a provision that disputes as to interpretation shall be submitted to impartial arbitration. These and other methods of peaceful solution of interpretation disputes should be encouraged.

I must point out, however, that an arbitration award is of little value unless the union is legally obligated to live up to that award. Everything that I have said concerning the need for making the union legally responsible for living up to its agreement also applies in some measure to arbitration awards. In fact, it can be confidently predicted that the use of voluntary arbitration rather than strikes will be greatly expanded if unions are made responsible for living up to their agreements.

Gentlemen, if you have any faith in collective bargaining—if you want to give collective bargaining an opportunity to prove that it can function effectively to satisfy the needs of employers, employees, and the public—don't impose Government domination, regulation, or interference in the collective-bargaining process. Nobody can determine the conditions under which they want to work together as well as can management and its own employees. Given an opportunity to do so under a system of fair laws and after removal of external interferences, you will see an era of industrial peace such as this country has never known.

In addition to the imminent danger of Government intervention, two of the chief external interferences to good labor relations at the plant and company level are industry-wide bargaining and the secondary boycott.

Industry-wide bargaining

Let's get back to the fundamental relations between management and its employees within the plant. Let us say that in the particular plant under considerable management and employees have attained good relations and under-

stand each other and understand each other's problems. The plant is functioning smoothly. Management is satisfied with production costs and rate of production. The employees are satisfied that they are working for a good company.

But suddenly there are instructions from the national union president ordering all local unions out on strike. I am not stretching my imagination in giving you this example. This is precisely the situation which occurred in hundreds of plants when Philip Murray, president of the United Steelworkers and of the CIO, ordered strikes in all plants where the United Steelworkers were collective-bargaining agents in January of 1946. Friendly relations were disrupted. Employees who were satisfied with their wages, hours, and working conditions had no alternative but to obey. Employers were dumb-founded. They had the old-fashioned idea that strikes arose only when there was a dispute between employees and their employers. But here was a situation in which hundreds of plants in which no dispute existed were nevertheless struck.

A dispute between the national union and the United States Steel Corp. was injected into hundreds of plants which had little relation to the United States Steel Corp. or to the basic steel industry. Even a plant which manufactured paper milk cartons in Brooklyn was not spared from the general orders from the steelworkers' high command.

When industry-wide bargaining replaces collective bargaining at the plant or company level, the fundamental purposes of collective bargaining are distorted and the operation of local unions is obstructed. The problems of the specific plant and of the employees of a given company are neglected and the union becomes more of a political organization than a bargaining agency.

Plant level or company level bargaining is necessarily concerned with the success of the particular enterprise. Industry-wide bargaining neglects the special problems which determine the success or failure of individual companies.

Industry-wide bargaining results, in many cases, in labor insisting on conditions which have no local application. I know of a small plant in California with 35 employees in the bargaining unit which submitted to its management a mimeographed list of 21 demands prepared in Pittsburgh by a staff who knew nothing about the condition or problems of the little California plant. In fact, that kind of bargaining in some cases results in demands which local union leaders themselves do not understand or cannot explain. It is little wonder that that kind of bargaining result in a break-down in collective bargaining and in strikes which have little or nothing to do with the relationship between management and employees at the local level. The tragedy and suffering of these unnecessary strikes imperils the institution of collective bargaining itself.

There are other aspects of industry-wide bargaining which need careful consideration before we permit this kind of Nation-wide group action to develop even more strongly than it has in the past. The people of this country are rightly concerned about monopolies. We have taken action to pass laws and to enforce them, preventing monopolistic practices by businessmen in restraint of trade. But if we encourage industry-wide bargaining, it means that we encourage strong organizations of unions on one side and of employers on the other side. Such strong associations on both sides are likely to use their united strength in ways which will be harmful to the public and may come close to monopolistic activity.

When an industry-wide agreement is made, some companies can operate under it easily. High-cost operators, however, are likely to be seriously affected, and may even be required to go out of business in an attempt to meet the industry standard. These high-cost operators are likely to be the smaller companies. The result, therefore, is that industry-wide bargaining is likely to lead to ever-increasing concentration of industry, thereby discouraging the small businesses which are the backbone of this country.

Industry-wide bargaining tends less and less to satisfy the needs of individual employers and employees, and is likely to be concerned mostly with the large problems of national wage trends, the industry's profit position, the ideologies of the national union, and, perhaps, even the political impact of an agreement or lack of an agreement.

Industry-wide bargaining, therefore, means that collective bargaining fails to achieve its primary purpose—that is, the satisfaction of the needs of individual employees and of management. The benefits of collective bargaining can best be cultivated when collective bargaining takes place at the local plant or company level. Removing collective bargaining to the industry level substitutes political autocracy for industrial democracy.

Industry-wide bargaining necessarily means that a very few men can determine the fate of the entire industry. This means that the public interest becomes immediately involved. One company may close down, but the public is not denied access to similar goods or services offered by competitors. But when an entire industry closes down, the public is entirely deprived of those goods or services and an economic dispute is then headed for a political solution.

If you permit industry-wide bargaining, you practically insure Government intervention in labor disputes. If we want to preserve collective bargaining in place of Government domination, then we must outlaw industry-wide bargaining and bring it back to the plant and company level where it belongs.

If we are going to have industrial peace, that industrial peace must be based on collective bargaining wherever employees choose to bargain collectively. Collective bargaining cannot be successful unless it meets the human needs of the employees involved. It cannot meet the human needs of employees if two negotiators in Washington or Pittsburgh attempt to determine the relations for a plant in Ashtabula or Denver.

If an individual management and its employees have negotiated an agreement, they are going to do their best to make it work. But if an agreement is thrust upon them from above, there is little inducement to make it work and little possibility of its being thoroughly understood.

Realizing that industry-wide bargaining leads to Government intervention, I ask you to look at the coal industry—the prime example of industry-wide bargaining—and determine whether you want to subject all of American industry to the same sorry situation in which the coal industry now finds itself. Industry-wide bargaining leads to industry-wide strikes. Industry-wide strikes lead to Government intervention. Government intervention prevents collective bargaining and leads to increasing Government control of industry and of labor. In some cases it can lead to permanent Government intervention, which means nationalization of industry.

In fact, industry-wide bargaining has a peculiar attraction for those whose primary interest lies, not in advancing the people's standards of living, but in overthrowing our system of competitive enterprise and political freedom. Plant and company-level collective bargaining gets at the grass-roots problems where they can best be handled; industry-wide collective bargaining leads to the rarified atmosphere of ideological clashes.

Let me make it clear that this strong stand against industry-wide bargaining is not a question of employers versus unions. There are outstanding spokesmen for both labor and management on both sides of this question. The National Association of Manufacturers, however, has no hesitation in alining itself on the side which promotes the public welfare. There can be no doubt that the public interest in industrial peace, in lower prices, and in promotion of competition fully justifies the prohibition of industry-wide bargaining.

Price fixing is properly regarded as a monopolistic practice that reduces the amount of available goods and forces the public to pay more than the goods are worth in a free market. But industry-wide bargaining fixes wages throughout industry—and wages, in general, constitute about two-thirds of the total cost of a manufactured product. When you get industry to agree on two-thirds of its costs, you have gone pretty far in the direction of agreement on prices.

Our opposition to industry-wide bargaining is not an attempt to limit the growth or power of unions. If industry-wide bargaining is outlawed, the same limitations that are imposed on joint union action would have to be imposed on joint company action. If it is wrong for unions to combine to bargain collectively, it is equally wrong for companies to combine to bargain collectively. We ask for no special treatment for industry. Basing our policy on the public welfare, we urge that industry-wide bargaining on both sides should be rooted out.

In order to stimulate plant level harmony; in order to protect the consumer against the monopolistic power to exploit; in order to protect the public against industry-wide strikes and Government operation of industry, the National Association of Manufacturers urges your consideration of the principle that monopolistic practices in restraint of trade are inherently contrary to the public interest, and should be prohibited to labor unions as well as to employers. It is just as contrary to the public interest for a union or unions representing the employees of two or more employers to take joint wage action or engage in other monopolistic practices as it is for two or more employers to take joint price action or engage in other monopolistic practices.

Secondary boycotts

I have shown how peaceful relations between management and employees can be arbitrarily destroyed by orders from above in cases of industry-wide bargaining. An equally effective weapon for the destruction of harmony is the use of the secondary boycott.

Fundamentally, the secondary boycott consists of the refusal of employees to handle or deal with goods made by nonunion labor, by union labor belonging to a rival federation, or even by union labor belonging to the same national union but a different local of it.

The secondary boycott insures that labor disputes extend beyond the plant or company where the original dispute takes place and interferes with harmonious relations of other plants or companies. Sometimes the secondary boycott is utilized simply as a jurisdictional weapon, or for the purpose of making more work for the members of the unions involved, even when there is no labor dispute whatever to initiate it.

Let me give you an example. The largest city in the country has had imposed upon it a tariff barrier which makes assembled electrical equipment much more costly in the city than it is outside. This tariff barrier was not erected by any act of Congress or State legislature or city council. It is the action of a union operating within the law as it now stands. The Supreme Court has held that so long as that union does not conspire with employers in the effectuation of its monopoly control over assembled electrical equipment, it is immune against prosecution under the antitrust laws. That tariff barrier prevents the shipment of assembled electrical equipment into the city of New York and raises the cost of such equipment to the customers and to the public. A small group of men get the full benefits of that legal monopoly power. Let me quote you from the instructions issued by another local of the same union—local 292 of the International Brotherhood of Electrical Workers—at Minneapolis in October 1945:

"The practice of this organization in the past has been that when electrical fixtures which did not bear the union label were delivered to a job, our members rewired them before they were hung. For various reasons the practice of re-wiring nonunion fixtures is now being discontinued. Beginning November 1, 1945, all electrical fixtures must bear the IBEW union label or they will not be hung by local union members 292."

I defy anyone to discover a more arrogant abuse of monopolistic power. But let me make it clear: As the law now stands, such practices are within the law, despite the fact that it is destructive to sound, industrial relations and results in raising costs and lowering the standard of living.

Let me give you another example. A small sand and gravel manufacturer had his plant organized by the CIO. After the union had established itself as the duly authorized collective bargaining representative of the employees, the employer signed a collective bargaining agreement with it. Whereupon the AFL, which had heretofore taken no action whatever, without notice to the employees or the employer imposed a boycott upon the company's products among the company's customers. The employer was caught between the requirements of the National Labor Relations Act and the ruthless tactics of the union in imposing a boycott upon his market. The employer continued to deal with the union representing his employees and, as a result, lost a major portion of the market which he ordinarily served.

Gentlemen, that is the power which the boycott puts into the hands of the union. That is the weapon which destroys sound collective bargaining relationships. Under the law as it now stands, management is helpless in these situations. The boycott power is even more menacing when practiced by a union which is entrenched in power by means of the closed shop extended throughout the industry by industry-wide bargaining. The public is often unaware of the heavy toll it is paying for the privilege of dealing with legally protected monopolies. It is the smaller companies that are hit hardest, and these abuses seldom hit the headlines.

Nevertheless, I submit to you that neither labor peace nor free competition is possible unless the secondary boycott is prohibited and labor relations are again restored to managements and their own employees to handle in the way which best fills their needs. That relationship must be preserved from the external intervention of industry-wide bargaining and secondary boycotts.

WHEN UNION OBJECTIVES INTERFERE WITH THE BEST INTERESTS OF THE EMPLOYEES

Whenever employees desire to bargain collectively, it is right and proper that they should be represented by a union. The main function of that union is to represent the employees in bargaining collectively with their employer on questions of wages, hours, and working conditions. But the creation of a union in itself automatically raises certain problems which require a high degree of responsibility on the part of union leaders. It is inevitable that professional union leaders should be concerned about questions involving the interests of the union itself, in addition to the problems of the employees. Sometimes the interests of the union, particularly if it is the national union that is involved, run counter to the interests of the employees of a specific company or plant.

For example, let us take the case of the American Locomotive Co., concerning which testimony was presented to you within the past 2 weeks. Certain production employees of the American Locomotive Co. are represented by the United Steelworkers of America. Without regard to the desires of the local employees, and without regard to the fact that wages in the locomotive industry were higher than that in any other manufacturing industry, the employees of the American Locomotive Co. were ordered out on strike because the international union was then negotiating with the United States Steel Corp. The management of the American Locomotive Co. had no opportunity to negotiate about these issues. There was no opportunity to settle the dispute until settlement had been made with United States Steel—and then the local settlements were required to coincide with the settlement with United States Steel. There is no question in my mind that the employees of the American Locomotive Co.—one of many hundreds of companies in the same position—were unnecessarily required to strike and lose their wages for the sole purpose of promoting the strategy of the international union.

I submit that national and international union strategy should not be permitted to disturb sound relations existing between management and its employees.

In the same category of unnecessary strikes based on union strategy rather than the welfare of the employees can be listed all of the strikes which do not relate to wages, hours, and working conditions, as well as the strikes which are based upon demands which the employer is powerless to grant.

Unjustified strikes

There is no justification whatever for injuring the employer, the employees, and the public by engaging in jurisdictional strikes. The point is so obvious as to require no reiteration. While jurisdictional strikes may be a small proportion of the total, their influence and danger far exceed their number. Thousands of tons of agricultural produce rotted in California fields and canneries because the AFL and CIO engaged in a struggle for power—while food was denied to starving millions. These are strikes for purely union purposes. They do the employee no good whatever. He is no better off when the strike is over than he was when the strike began. The strike does not raise his wages nor improve his working conditions. It deprives the public of goods, the employee of wages, and may ruin the employer's business.

After all, it should be the free-will decision of the employees themselves which determines whether union X or union Z will represent them. Since adequate machinery for such determination is always available, there is no excuse whatever for encouraging or tolerating such strikes. If those who engage in these strikes are deprived of the protection of labor laws, these strikes will not be of frequent occurrence.

Another type of strike which is carried out only for purposes of union strategy is the sympathy strike. There is no reason whatever for the employees of company A going on strike simply because there happens to be a dispute in company B. Sympathy strikes are destructive of that stability of relationship which we are trying to achieve. When sympathy strikes are carried out to their logical conclusion, we have the general strike—the favorite tool of subversive forces to disrupt a stable government. We have had examples of general strikes within the past year. We have seen them in operation in Rochester, N. Y., and at Oakland, Calif. The general strike is as close as we can come to civil war without actual armed conflict—and sometimes it comes quite close to armed conflict.

Strikes against the Government are strikes against the public, rather than against an employer. In a democracy all citizens are equal in their obligations to the government and in their right to protection from their government. Their desires can and should be expressed at the ballot box. No group should have the power to stop the operation of a government of all the people in order to obtain special consideration or concessions for the group. The public interest in maintenance of orderly government is superior to the selfish demands of any group.

Strikes against the Government are the favorite weapon of those whose interests in the labor movement are based on political ideology rather than upon the concern of the welfare of working people. I could cite many examples, but I shall limit myself to one. When the merchant marine workers called a 24-hour strike on the pretext that they wanted the Government to divert more ships to the transportations of veterans from the European theater of war, I find myself wondering whether those who instigated that strike were more concerned with the welfare of the seamen than they were in the political implications of reducing American armed forces in the European theater.

Strikes to force an employer to ignore or violate the law constitute an invitation to anarchy. Such a strike is not an exercise of collective bargaining rights. It is a conspiracy to violate the law. Such strikes are a danger to the Government and a menace to society. Whether the strike be one to force the employer to violate safety provisions required by law, or whether it be to force the employer to violate wage stabilization in time of war, the purpose is the same: the collective power of the workers is being misused to oppose the operation of the rules of society.

Strikes or other coercive actions to force recognition of an uncertified union have no place in the collective bargaining picture. If a union really represents a majority of the employees, it can petition to be certified, and the employer is thereafter obligated to bargain with it. It is sheer racketeering to coerce the employer by strikes, boycotts, picketing, or otherwise to recognize an uncertified union, and especially so where the union actually has not been selected by a majority of the employees.

The Gibson Paint Co. in Oakland, Calif., is a small company having a total employment of three men. It has been manufacturing paint since 1923. The three employees of the Gibson Paint Co. did not think they needed a union to represent them. When a union agent appeared, they refused to join. The business agent urged the employer to force the employees to join the union, but the employer replied that it was up to each individual employee to decide which church he ought to belong to, whom he ought to vote for, and whether or not he ought to join a union. Thereupon, despite the fact that there was no dispute whatever between the three employees and the company, a picket was placed outside the office and the unionized teamsters refused to cross the picket line. The company, thus deprived of raw materials, was shut down within 5 days. Both the company and the employees sought legal aid, but were told that there was no recourse. Eventually the three employees paid a ransom fee of \$75 (the union business agent called it the initiation fee) so that they could go back to work at their old job under the same terms. This case can be repeated time after time. It is the small businesses that suffer the most.

The National Labor Relations Board is rather proud of the fact that in 1945, 10 years after the National Labor Relations Act was passed, only 29 percent of all strike idleness was due to union organizational strikes. Think of it—nearly one-third of all strike time lost is due to strikes over a question for which there is adequate provision to determine the answer by legal procedure. Here is one single point which, if adequately covered by appropriate legislation, can immediately reduce strikes by nearly one-third.

One other type of unjustifiable strike that I want to mention is that which attempts to force feather-bedding or other work-restrictive demands. Surely it is not in the best interests of the employees themselves to require unnecessary men to stand by or to limit the amount of work a man may do. Any self-respecting man wants to turn out a fair day's work for a fair day's pay. What a fair day's work may be varies from person to person. Arbitrary restrictions on production hurt the employer by raising costs, hurt the employee by limiting his wage, and hurt the public by reducing the amount of goods available and raising their cost.

So effective is the opposition of the unions to premixed concrete in the Chicago area that there is no premixed concrete plant in the vicinity. Concrete must

always be mixed the hard way and the expensive way right on the job. In this and countless of hundreds of other ways, costs of building construction and other products are raised so that the public cannot afford to buy. Any limitation in production which is not based on sound grounds of health or safety of the employees is fundamentally antisocial and should not receive the protection of law.

All of these unjustified strikes and other coercive measures for illegitimate purposes can only interfere with sound relationships between management and employees. They may temporarily serve the strategy of some union, but they damage the employee and they destroy the possibility of attaining good employer-employee relations.

When such tactics are pursued, I urge that Congress give consideration to the following remedies:

1. Permit the employer full freedom to discipline and discharge those who participate or instigate these activities.
2. Withdraw the protection of the Wagner Act and the Norris-LaGuardia Act from those who engage in or instigate these actions.
3. Enable those who are damaged by such actions to recover through civil suit.

I am not here to propose specific legislation, but I feel very strongly that the forthcoming legislation will not serve the purpose of eliminating abuses in labor relations unless it is drawn in consideration of the principle that: No strike should have the protection of law if it involves issues which do not relate to wages, hours, or working conditions, or demands which the employer is powerless to grant. Such issues and demands are involved in jurisdictional strikes, sympathy strikes, strikes against the Government, strikes to force employers to ignore or violate the law, strikes to force recognition of an uncertified union, strikes to enforce feather-bedding or other work—restrictive demands, or secondary boycotts.

Insuring majority choice in strikes

Not only is it necessary that unjustified strikes be discouraged; it is also essential that when a strike takes place, it should result only if good-faith collective bargaining has failed to resolve a legitimate difference of opinion over wages, hours, or working conditions, and then only if the strike is not in violation of an existing agreement and is the free choice of the employees. To assure that a strike is the free choice of the employees, strikes should only be called if a majority of the employees in a bargaining unit, having heard the proposals made by both sides and having before them the latest offer of the employer, vote by secret ballot, under impartial supervision, to strike rather than accept the employer's offer.

Let me emphasize the importance of timing with reference to the strike ballot. If the employees are asked to authorize their bargaining committee to call a strike before negotiations have taken place—and this has been standard practice particularly with reference to Smith-Connally Act strike ballots—then they regard the strike ballot as simply an additional weapon to put in the hands of their bargaining committee. In such a situation employees will naturally vote in favor of the strike. If, however, the parties have actually bargained in good faith and if that bargaining has resulted in an impasse, the strike ballot at that time gives the employees full freedom to choose whether they will accept the employer's latest offer or whether they will "hit the bricks." In these circumstances a strike ballot is the genuine expression of the employees' desire.

Another point which, it seems to me, has not received adequate consideration is the question of who should be eligible to vote in a strike ballot and how many constitute a majority. A strike affects more than the members of a union. It affects all of the employees in the bargaining unit. Accordingly, the strike ballot should be taken among all of the employees in a bargaining unit whether they are union members or not; and a majority vote of all such employees should be required before a strike should have the protection of labor laws.

We have had altogether too many precipitate strikes called by a minority or by a union leader who takes the initiative in his own hands. The power of a strike to wreck the economy is too great to permit its being used haphazardly or irresponsibly.

The NAM urges that this committee give careful consideration to the fundamental principle that: If a legitimate difference of opinion over wages, hours, or working conditions cannot be reconciled through collective bargaining or media-

tion, employees should be free to strike where such strike is not in violation of an existing agreement. However, the protection of law should be extended to strikes only when the majority of employees in the bargaining unit, by secret ballot under impartial supervision, have voted for a strike in preference to acceptance of the latest offer of the employer. Employees and employers should both be protected in their right to express their respective positions.

The source of coercive power

I have pointed out numerous instances in which drastic action is taken to serve the purposes of the union rather than to promote the welfare of the employees. The union's power to get the employees to take such action rests on more than mere persuasion. In many cases the union's power stems from the compulsion of the closed shop, the union shop, or the maintenance of membership provision.

All three have this in common: The employee affected must either join or remain a member of the union as a condition of employment. His freedom to select one union rather than another or to show his disapproval of union tactics by resignation, is destroyed.

Under conditions of compulsory union membership, the union ceases to become the servant of the employee and acquires the power to become a dictator. The employee then holds his job at the pleasure of the union officer. The relationship between employer and employee thus comes full circle; the employee has traded the former unquestioned authority of the employer for the new dictatorship of the union officer. Where the employer was guided by considerations of the long-range welfare of the business, the union leader is motivated by the needs of immediate union strategy.

Under the closed shop, the employer-employee relationship becomes secondary to the employee-union relationship. The employee becomes more concerned about his standing in the union and his relation to the union officer than he is about the efficiency of his work or the attitude of the employer. Shop discipline—that orderly procedure which is necessary to effective coordination—becomes secondary to union discipline. And since opposition to the union officer may result in loss of his job, the employee loses the democratic right to oppose union policies and tactics which he considers unwise or improper.

I certainly do not mean to imply that all officers in closed-shop unions are autocratic. I do submit, however, that the closed shop encourages autocratic and dictatorial actions on the part of union officers. And when the closed shop is extended to cover an entire industry, the resultant concentration of power in the hands of a few men or even one man exceeds any monopoly power ever attained by industrialists or financiers in the days before the Sherman Anti-trust Act was put on the statute books. When the closed shop gets a grip on an entire industry, the loss of a union card may mean the loss of a livelihood, since the employee then cannot get a job anywhere in the industry.

This is the power which makes it possible for the unions to coerce employees to take action which is contrary to the welfare of the employees themselves. This is the power which encourages violations of contract.

Let me give you one case in which an employer was operating under a union shop with a no-strike clause in the agreement. Despite the no-strike clause, the union called a strike. Two of the employees refused to join the picket line when they knew that, through the union, they had agreed not to strike. The union demanded that the two employees be discharged, and the employer was forced to comply. As the president of the company stated to the National War Labor Board, "May I ask the public members of the Board how they would feel if they were put in the position in which I was placed, of having to authorize the discharge of two efficient workers who had done only what their conscience and their contract demanded?"

The arbitrary power lodged in the hands of union leaders by the closed shop prevents the operation of normal collective bargaining. With the employees' jobs at his personal disposal, the union leader is in position to make demands which best serve the purposes of the union, without regard to the effect upon the company or the employees.

Once a union member is expelled or suspended, most union constitutions are inadequate to protect the individual member's rights or to insure him a fair hearing on the merits.

One of the greatest dangers of the closed shop is that it controls not only newly hired employees, but also employees who are transferred from the office or from

another plant, or who are promoted or demoted to a job within the bargaining unit. For example, assume that a messenger boy has shown unusual promise and has a mechanical bent. In the case of a closed shop, he cannot be transferred to develop his mechanical ability within the shop unless the union agrees to admit him to the union. The union may prefer to fill the position with some union member who was unable to measure up to his previous job.

Similarly, there may be times when it is necessary to temporarily put a foreman back in the production unit because of conditions beyond management's control. If the union refuses to accept that foreman or puts him in bad standing, the employer may be forced to discharge him. Is it any wonder that foremen under such circumstances do their best to make their peace with the union regardless of the merits of the situation? The very possibility of such action undermines management's ability to carry out its functions.

With the dictatorial power of the closed shop, union leaders are able to coerce union members to participate in activities far removed from ordinary collective bargaining. It is no accident that many of those who are convicted of racketeering practices in unions have utilized the power of the closed shop to promote their racketeering activities.

Legitimate labor union activity is fully and adequately protected under the Wagner Act. Domination of the union by the employer, unfair labor practices by the employer, discrimination in regard to hire or tenure of employment on the part of the employer are all prohibited by the Wagner Act. Kindly note that in all of my remarks I have not proposed that industry be relieved of its obligation to bargain with a certified union. In view of the protection offered by the Wagner Act, the closed shop is wholly unnecessary and constitutes a menace to healthy labor relations.

The closed shop and its many ramifications should be prohibited as being injurious to employer, employee, and the public alike. There is ample justification for supporting the NAM principle that: No employee or prospective employee should be required to join or to refrain from joining a union, or to maintain or withdraw his membership in a union, as a condition of employment. Compulsory union membership and interference with voluntary union membership both should be prohibited by law.

Unjustified strikes can be almost entirely eliminated by (a) eliminating the dictatorial union control over the worker's job inherent in the various forms of compulsory union membership, and (b) assuring all employees in the bargaining unit of a fair opportunity to vote by secret ballot whether they want to strike or accept the employer's latest offer, when good faith collective bargaining over their wages, hours, and working conditions has reached an impasse.

I freely admit that even if these recommendations are embodied in law, strikes will not be entirely eliminated, nor will we automatically arrive at an era of uniformly healthy labor relations. You cannot legislate good labor relations. You can only legislate the framework within which good labor relations can be attained by responsible employers and responsible employees and unions, voluntarily working out the conditions under which they can cooperate for maximum production, combined with maximum satisfaction of human needs.

EQUITY AND EFFICIENCY

Much as management and its employees may desire a harmonious relationship, harmony is discouraged if the law imposes inequity upon the parties. Harmony between management and employees cannot exist where the legal framework under which they carry on their day-to-day contacts encourages inequity and interferes with the ability of both management and labor unions to carry out their legitimate functions.

Equality of obligations to bargain

Equity demands that there be equality of obligation on the part of both management and labor to bargain collectively and to live up to their collective-bargaining agreements.

Kindly note that I have not suggested or proposed that management be relieved of its obligations to bargain collectively. Where a majority of the employees voluntarily choose to be represented by a collective-bargaining agency, it is not unfair to impose upon management the legal obligation to bargain collectively with the representative of the employees. But it takes two sides in

order to bargain collectively, and an obligation which rests on only one is bound to interfere with the carrying out of the bargaining responsibility by both parties.

American employers have in general accepted their legal obligation to bargain collectively when a majority of their employees have indicated that they wish to be represented by a union. Time and time again, however, the employer's desire to reach a satisfactory agreement with his employees has been thwarted by a union's refusal to bargain in good faith. This situation clearly was not foreseen by those who drafted the Wagner Act. Experience has conclusively proved that the exemption of labor unions from the obligation to bargain has been a major factor in the break-down of collective bargaining.

When a union calls a strike before it has been selected as a collective-bargaining agency of the employees, it is not bargaining collectively. When a union throws a picket line around the plant despite the fact that few or none of the employees are members of the union or want to join it, that union is abusing the rights it has under the law; and what is equally important, it is destroying the sound and normal relationship between the employees and their employer.

When the union refuses to meet with plant management, it is apparent that the company is stymied in its efforts to promote industrial harmony. At the present time, it is possible for a strike to take place without prior negotiation. This strategy of "strike first and negotiate afterwards" has served the purposes of subversive and disruptive elements particularly well. It provides them, and other irresponsible agitators, with an unparalleled opportunity to promote industrial strife—and to do it legally.

The fact that unions are exempt from the obligation to bargain in good faith encourages the union to dictate the terms on which it will consent to negotiate. Let me be specific. The International Typographical Union presented the New York Employing Printers Association with a series of demands (among which was an increase of 27.25 percent in take-home pay), and advised that failure to accept would result in a strike. That wasn't collective bargaining. It was an ultimatum, which the printing association reluctantly accepted, after the union had refused impartial arbitration and Government conciliation.

When John L. Lewis demanded that the operators accept his union royalty demands before he would even tell them what the rest of his demands were, he was not bargaining collectively. Nor is it enough to condemn John L. Lewis as an individual. He was simply utilizing the favorable position granted him by law, as would most other unscrupulous men in the same position. The inequity of the individual is not nearly as dangerous as is the inequity in the law. It is the law which provides that the operators must bargain collectively, without providing any obligation whatever on the union to bargain.

Under the present law a strike can be called before negotiations are completed, even though the negotiations are proceeding well. The Libbey-Owens-Ford Glass Co.'s plant in Ottawa, Ill., was struck without warning in the midst of the company's negotiations with the Federation of Glass, Ceramic, and Silica Sand Workers of America.¹ The plant was closed at just the time when satisfactory agreement seemed likely.

It was precisely because unions are not obligated to bargain that collective bargaining came off so poorly during the steel strike last January. The plants of over 800 different employers were struck at the same time, despite the fact that in many of these plants collective bargaining was proceeding satisfactorily. In some plants negotiations had not begun, and in others demands had not been made. What chances did the individual plant management have? None—because there was no obligation on the part of the union to negotiate. Had such an obligation been present, the effects of the industry-wide steel strike probably would have been less severe. Individual employers and local unions would, at least, have had a chance to try to make collective bargaining work.

The few examples which have been cited merely illustrate the nature of the obstacles which employers encounter in trying to make collective bargaining effective. Just as the law holds an employer's refusal to bargain in good faith an unfair labor practice, so it is imperative that the law should regard a union's refusal to bargain in good faith an unfair labor practice, if collective bargaining is to be given a real chance to promote labor-management harmony.

¹ Letter dated November 16, 1945, from L. G. Bryan, vice president, Libbey-Owens-Ford Glass Co., to Joseph Froesch, international president, Federation of Glass, Ceramic, and Silica Sand Workers of America.

The absence of the obligation to bargain collectively substitutes collective bludgeoning in place of collective bargaining. It encourages strategic moves. It encourages strikes before demands are made. It encourages running to the Government for help, rather than trying to work out mutual problems through the collective-bargaining process.

Gentlemen, if you are concerned about creating conditions which enable labor and management to settle their problems through genuine collective bargaining, I am confident that you will consider establishing the equal obligation to bargain collectively upon managements and unions as one of the essential stepping stones to the desired goal.

It is in recognition of the importance of such a provision that the NAM has adopted this as its first "basic principle underlying good employee relations and sound collective bargaining": The union, as well as the employer, should be obligated, by law, to bargain collectively in good faith, provided that a majority of the employees in the appropriate unit wish to be represented by the union.

Equal responsibility for living up to collective agreements

Just as simple equity requires that both parties to the collective-bargaining process be under the same obligation to bargain collectively, so it requires that both parties be under the same legal responsibility for the observance of the agreement that they have signed. The whole purpose of collective bargaining is to stabilize the relations between management and its employees by means of a written agreement which sets forth the rules under which they agree to work together during the period of the agreement. But the whole process of collective bargaining is undermined when one of the contracting parties can treat this agreement as a scrap of paper. Today the employer is legally liable for failures to observe the collective-bargaining agreement. The unions, however, are in many States free of legal responsibility for living up to their agreements and have taken advantage of that freedom to call strikes in violation of the agreement and to violate it in other ways. This immunity has encouraged union irresponsibility.

Here again let me make it clear that I am not requesting that management be freed of its liability to live up to its collective-bargaining agreements. I am asking only that, in simple equity, the same liability be placed upon labor unions. Such a proposal would in no way weaken the union in its legitimate functions. It would go a long way, however, to restore leadership within the unions to the more responsible elements, and exert a restraining influence upon those whose interests lie in disruptive and destructive tactics.

Union irresponsibility in this connection lingers strongly in my mind because I recall that when I attended the President's Labor-Management Conference in November 1945 the transportation system of the city of Washington was paralyzed by a strike on the part of the Street, Electric Railway, and Motor Coach Employees (AFL), despite the fact that their contract contained a no-strike provision, and despite the company's offer to arbitrate the matters in dispute.

There are many of us who believe that there is a place for voluntary arbitration in the resolution of labor disputes relating to interpretation of agreements and possibly some other specific situations. But what incentive is there to submit a case to arbitration when, as is true in some cases, there is no way of enforcing the arbitration award against the union? On the last day of 1945 the National War Labor Board, which had been appointed by both parties as an arbitrator in a case involving Western Union, handed down a decision. The company accepted the decision, as it had agreed to do, despite the fact that it involved millions in back pay. The AFL union, representing employees outside of New York, accepted the decision, as it had agreed to do. The CIO union, representing employees in New York City, refused to accept the decision, although it had agreed to do so, and initiated a long and violent strike. What possible solution can there be to any labor dispute so long as one party is free to violate not only its agreement but also any arbitration decision?

As Harold W. Metz states so well in the Brookings Institution Study on Labor Policy of the Federal Government (p. 82):

"If one major purpose of the labor policy of the Federal Government is to encourage the making of collective-bargaining agreements, it would be desirable that such agreements be considered as legally enforceable contracts. If employers are certain that a union's agreement not to strike or to picket will be enforced,

then there is a great incentive for them to enter into collective agreements. Where these agreements cannot be enforced, the employers will not readily see what they can gain from collective bargaining. Unions have much to gain from making enforceable agreements."

Industry is convinced that industrial peace cannot be attained unless unions are made legally responsible for the observance of collective-bargaining agreements. Any union which is certified as a collective-bargaining agency, or which is recognized as representative of employees, should be liable in damages caused by its willful breach of agreement. Without that legal responsibility, industrial peace cannot be expected to endure very long.

It is because of its deep interest in the implementation of industrial peace that the NAM holds that: The union as well as the employer should be obligated, by law, to adhere to the terms of collective-bargaining agreements.

Freedom of speech

Sound relations between management and its employees can only be anticipated where both parties are encouraged to set forth their views fully and frankly. Shackling the freedom to convey one's views is the first step of any dictator. If we would promote and develop friendly relations in our industrial plants, we must put no barrier to communication between management and employees.

I see nothing in the present law which takes that right away from either employers or employees, but that law has been so completely distorted in administration and interpretation that it has been held to be an unfair labor practice for an employer merely to call his employees together during working hours to discuss union matters with them, even though his comments in themselves were not objectionable. That is not only a miscarriage of the original intent of the law; it is an outright and intolerable interference with the employer's right to speak to his employees. Even more important, it is an obstruction to the attainment of any kind of understanding between management and its employees.

In pointing out the need for full freedom of speech on both sides, I am not suggesting that union leaders be muzzled, nor that employers be permitted to coerce or intimidate employees with reference to union matters. Coercion and intimidation have no place in the relationship between employers and employees. But the very life blood of a sound relationship is freedom of communication. Understanding can arise only through unrestricted communication. Anything which bars that freedom of communication plays only into the hands of those who want to be free to mislead the employee and to create industrial chaos.

In order to chieve that freedom of expression, the NAM holds that: Employees and employers should both be protected in their right to express their respective positions.

Force and violence

If we are agreed that industrial peace depends upon equity in the relations between management and employees, then we must take steps to root out every element of force and violence, every element of coercion and intimidation, which are so prevalent in the entire situation.

The rights of freedom of speech, freedom of religion, freedom of assembly, freedom the press are justly held dear by all of us. No less dear is freedom from molestation of the person, the home, or the family of the individual citizen, whether that molestation be by Government or by other groups which take the law into their own hands. And in a predominantly industrial society such as ours, the right to work at an available job of the individual's own choice becomes a basic right worthy of the protection of local and Federal governments.

The right of an employee to work at an available job of his own choice must not be vitiated by mass picketing or any other form of coercion or intimidation. Neither should any group be permitted to molest the individual employee or his family at home or at work, or interfere with his movements. Collective bargaining, like Government, should be the servant, not the master, of individuals.

The failure of local law-enforcement agencies to preserve individual rights has been one of the most disquieting developments of the postwar labor scene. In dozens, if not hundreds, of cases mass picketing has subjected thousands of individuals to force and violence exerted upon employees and the public alike. Men have been imprisoned within plants; office workers and factory workers

alike have been terrorized; work in process has been damaged or destroyed; pay rolls have been held up—all by massed, brute force.

Force, coercion, intimidation, whether by mass picketing, by goon squads or otherwise, have been the instruments by which subversive forces and labor dictators have imposed suffering and deprivation of personal and property rights upon the employees, employers, and the public.

In the long, drawn out Allis-Chalmers strike over 4,000 workers daily brave riotous pickets on their way to and from work. Ninety-four homes in Milwaukee have been attacked with cans and bulbs of paint; dozens of men have been injured. These were not the actions of individual employees. No less than a vice president of the international UAW has incited such actions by remarks such as the following: "I would like to see some morning every local union in the State around that plant, and if we can't keep the scabs out, we will go in and take them out."

Of what use is it to talk of labor peace and good relations between management and its employees when those who are in responsible positions so boldly and openly appeal to force and violence?

While the protection of individual rights is primarily a task for local law-enforcement agencies, the Federal Government should be in a position to step in to preserve law and individual rights when local law enforcement breaks down. The first obstacle to Federal court intervention in such cases is the Norris-LaGuardia act. That act should be amended to permit the Federal courts to enjoin violence and intimidation when local law enforcement is ineffective to protect the rights of individuals and their families to be free from molestation at home or at work.

When the Supreme Court declared that sit-down strikes were illegal, it made a great stride forward in the direction of orderly procedure and the protection of the rights we all hold dear. Mass picketing which prevents employees, executives, or the public from entering a plant or place of business is just as much a denial of access to property as is a sit-down strike. Think of the mob violence which has characterized the Yale & Towne strike, the Westinghouse strike, the Allis-Chalmers strike, and the jurisdictional disputes in Hollywood.

To those who hold that making unions subject to the same laws that apply to others is antiunion, I can do no better than to quote that great friend of labor, Mr. Justice Brandeis, who said:

"The plea of trade-unions for immunity, be it from injunction or from liability for damages is as fallacious as the plea of the lynchers. If lawless methods are pursued by trades-unions, whether it be by violence, by intimidation, or by the more peaceful infringement of legal rights, that lawlessness must be put down at once and at any cost."²

These appeals to force and intimidation can only play into the hands of those who are using industrial strife to further the class struggle. These civil conflicts are nothing but rehearsals for revolution, and are called just that by those who instigate them. Surely, we cannot permit our democratic civilization to be attacked by this virus and thus prevent men of good will on both the employer and the employee side from settling their problems peacefully and honorably.

It is for that reason that I beg your consideration for the principle that: No individual should be deprived of his right to work at an available job, nor should anybody be permitted to harm or injure the employee, or his family, or his property, at home, at work, or elsewhere. Mass picketing and any other form of coercion or intimidation should be prohibited.

Managerial responsibilities

You may have noted that I have not suggested that management be relieved of its obligations. But management's ability to carry out its obligations, both in collective bargaining and in the production process, is seriously endangered by the preposterous decision of the National Labor Relations Board, arrived at after much wavering, that foremen are "employees" under the Wagner Act, and therefore management is obligated to bargain collectively with the foremen who form so essential a part of management.

There can be no justification whatever for a position so far removed from the realities of the industrial scene.

² Brandeis, *Business—A Profession*, rev. ed., December 1933.

How can management be sure that its policy of working out problems with the union representing its employees is fully and freely carried out if the foreman is a member of a union? Even worse, how can management be sure that the foreman carries out its policies if the foreman is a member of the same union which represents the employees under him?

Just as the union steward is a representative of the employees, so the foreman or superintendent is the representative of management in all the many contacts between employees and management. The foreman passes down management's instructions, carries out management's policies, supervises the rank and file workers, passes up to his superiors the workers' reactions and requests, and normally acts as the management representative in considering employee complaints and grievances at their point of origin.

Neither sound employee relations nor productive efficiency can be attained when the foreman has a divided allegiance or when he considers union instructions as being superior to management instructions.

Let us be realistic. If we expect management to live up to its obligations, both in collective bargaining and in producing more goods at lower costs, let us not tie management's hands by imposing on it the obligation to bargain collectively with itself.

It is from a broad and deep understanding of the obstacles that such "collective bargaining" imposes upon management's efficiency and upon its collective-bargaining responsibilities that the NAM holds that employers should not be required to bargain collectively with foremen or other representatives of management.

Equity between man and man and the needs of productive efficiency can both be greatly promoted by extending to unions the obligation to bargain collectively, removing from unions their present immunities for violation of their agreements, giving managements and unions the same freedom to express their views, and removing from management the obligation to bargain collectively with itself.

CONCLUSION

In conclusion, I wish to summarize briefly the major objectives sought by the NAM program for a national labor policy. Our whole program is based on the assumption that, given the right conditions, labor and management can work out their problems through mutual conference and free collective bargaining and that this method is more calculated to bring about industrial peace than the alternatives of class conflict or Government dictation.

Our fundamental objective is to bring about a situation which will encourage rather than obstruct the instinctive tendency of employers and employees to recognize their mutuality of interest and work out their problems on a mutually satisfactory basis at the plant and company level. In order to clear the way for this approach to industrial peace, it is imperative that a national labor policy apply the following major correctives:

1. *Every encouragement must be given the solution of industrial disputes by voluntary means rather than Government dictation and determination of the conditions of employment.*—In the last analysis, gentlemen, harmonious relations between labor and management cannot be legislated. Super Federal machinery in the form of labor courts, mediation boards, or fact finding cannot insure industrial peace. All that Congress can and should do is to establish a sound and equitable national labor policy and encourage peaceful settlement of industrial disputes through a strong, impartial, and effective Conciliation Service dedicated to the restoration of free collective bargaining, and the betterment of labor-management relationships at the plant and company levels.

2. *Industrial strife in a single company or plant must not be permitted to spread or affect labor-management relationships in other plants or companies where sound and mutually satisfactory labor-management relationships already exist.*—It is imperative that extension of the area of industrial conflict beyond a particular employer be forbidden by law. If company managements and labor unions who sincerely desire to do so are to have a fair chance to establish sound and constructive relationships, they must be protected by law from the blighting effects of industry-wide bargaining and the secondary boycott. These two devices drag into an otherwise peaceful and friendly relationship disputes arising in other plants and other sections of the industry, resulting in needless industrial strife, violated collective-bargaining contracts, and a monopolistic interference.

with commerce, destructive not only to collective bargaining, but injurious to the health, safety, and economic welfare of the public.

3. *The strike should be utilized solely to advance legitimate interests of employees.*—As an essential part of our national labor policy and in the best interests of both the employees and the public, there should be assurances provided that the right to strike should be used only for legitimate purposes having to do with collective bargaining over wages, hours, and working conditions between a union and a single employer. The coercive power of compulsory unionism must not be permitted to force employees to act contrary to their own best interests.

4. *There must be equality of obligation and responsibilities between the parties in the interests of genuine collective bargaining, maximum efficiency, and industrial peace.*—Equity demands that there be equality of obligation on the part of both management and labor to bargain collectively and adhere to collective-bargaining agreements. This implies that there be an equal degree of freedom on the part of each to present their viewpoints to the employees and to the public. In addition, no right must exist on the part of either management or labor to interfere by force, violence, coercion, or intimidation between a worker and an available job. It likewise demands that if both labor and management are to be free to carry out their legitimate functions, particularly in respect to the direction and supervision of employees, management should not be obligated to bargain collectively with foremen.

Danger in failure to grapple with basic issues

The real danger which the country faces in its first serious effort to establish a sound and equitable national labor policy will be a reluctance on the part of Congress to grapple with the vital issues involved, or in yielding to those who urge further study and investigation of this whole problem, or who see in current developments on the Nation's labor front a reason for doing nothing at all.

The press, radio, and Government officials are commenting with increasing frequency on the arrival of what they refer to as "an era of good feeling in industry." The recent extension of the contract between the United Steelworkers and the United States Steel Corp., the arrangement for settling disputes between building construction employees and their employers, together with a very real subsidence in industrial strife, are being pointed to as "favorable developments on the labor-management front" and as an indication of a permanent change for the better in labor-management relations. The executive council of the AFL was recently quoted as saying, "today industrial strife is definitely on the wane," and the Secretary of Labor is reported in the press as feeling that in view of these favorable events no labor legislation is needed.

I am convinced that the present lull in industrial strife confirms what the NAM has long advocated; namely, that the establishment of a more equitable national labor policy would reduce industrial strife.

Gentlemen, I submit that if the very prospect of such a national labor policy can already produce the results now hailed as "a new era of good feeling in industry," the actual incorporation of these proposals into a national labor policy will insure that these benefits will be permanent and enduring and that the public will reap the advantages for generations to come. Any failure on the part of Congress to act now in this respect may have much to do with deciding on prosperity or depression for the United States in the next few years.

It is well at this time to recall that during the agitation and public indignation arising out of the widespread and disastrous labor strife of last year there were voices raised urging that it was no time for Congress to enact labor legislation and that the country should not approach the problem of recasting its labor policy in a spirit of hysteria or reprisal.

Now comparative calm has succeeded the storm. Now we are in a period where, by general admission, both labor and management are exercising restraint, and we are now told by those same people that the storm is over and that it will not now be necessary to repair the roof. We agree that the time to formulate a wise and statesmanlike national policy with respect to labor is after there has been ample opportunity for study and investigation, and when Congress can approach the problem free from the distractions of critical industrial strife. Now is such a time. The Nation has recently given the Congress a mandate not for hasty, ill-tempered, and ill-advised restraints on labor, but for a sound, constructive, and even-handed approach. Now is

obviously the opportunity for appropriate and immediate action on the part of Congress.

Further investigation and study before congressional action unnecessary and unwarranted

In his message to Congress on January 6 of this year, the President of the United States urged that a commission be established to investigate and recommend action to be taken on the problem of Nation-wide strikes, procedures for improving collective bargaining, and on the underlying causes of labor-management disputes. One of the bills now before Congress would set up a commission along the lines suggested by the President.

There can be no possible justification for undertaking such an investigation at this time. Over the past 10 years the problems arising out of an ill-balanced and unworkable national labor policy have absorbed a major share of the attention of Congress. During this period some 23,000 pages of testimony on this subject alone have been presented to congressional committees. The printed proceedings of the President's Labor-Management Conference of November 1945 set forth with crystal clarity the underlying causes of industrial disputes. Action on the Case bill, which represented the high-water mark of congressional study, investigation, and deliberation, was preceded by extensive testimony before committees and debates on the floor of Congress. As you well know, time and time again measures to provide fair and equitable labor legislation have been introduced into Congress, debated at length, only to be lost in committee or vetoed by the Chief Executive.

The NAM believes that the entire subject of labor-management relations has received such extensive and intensive study in the last several years that the major sources of trouble and the proper correction are clearly apparent. The Congress already knows or has access to adequate and complete information as to the causes of industrial strife and the remedies that are most likely to be effective. Congress has an unmistakable mandate from the country for constructive and immediate action. On this point I am happy to find myself in complete accord with the President of the United States when, in his Nation-wide broadcast to the American people over a year ago, urging the imperative necessity for labor legislation, he said, "If the measures which I have recommended to accomplish these ends do not meet the approval of the Congress, it is my fervent wish—and I am sure that it is the wish of my fellow citizens—that the Congress formulate measures of its own to carry out the desired objectives. That is definitely the responsibility of the Congress. What the American people want is action."

The beneficial effect upon the economy of the Nation, the welfare of the American people, and, in fact, the peace of the world which will result from prompt and decisive action by Congress to give this country a balanced and equitable national labor policy is unlimited. Favorable outcome of current and pending collective-bargaining negotiations between labor and management depends, in large measure, upon prompt and decisive action by Congress in establishing a sound and equitable national labor policy. This policy, if it incorporates and implements the principles I have emphasized, can do more than any other one thing to insure that the outcome of the present negotiations between labor and management will be such as to bring industrial peace and advance the economic welfare of the American people.

Commenting on the Nation's stake in the outcome of the present labor-management crisis, and the prospects of permanently improved labor-management relationships, one nationally known student and commentator expressed it this way: "The answer may have much to do with deciding whether the United States can expect prosperity or depression within the next few years. * * * It may also help decide the future of democratic capitalism and the future of world peace. If the United States succeeds in working its way out of its economic dilemma through the voluntary cooperation of labor and management, without government dictate, it cannot fail to add tremendously to the world-wide prestige of the American political and economic system. However, if we are plunged into another depression anything like 1929, there can be little doubt that it will mean first and end of free, enterprise and free labor, then of American democracy and liberalism, and finally the world triumph of some form of socialism, fascism, or communism, either through war or civil strife."

Congress can be assured of universal support

The NAM program invites universal support. In enacting legislation incorporating the major principles of the program proposed by the NAM, Congress can confidently and with reason look forward to the approval and support of all groups making up the American public.

I cannot emphasize too often that the principles which I have advocated here today as being basic to an equitable and sound national labor policy are being set forth not in the interests of manufacturers but in the interests of the great body of the American people. While major consideration has been given to the necessities of safeguarding and protecting the interests of the public, equal weight in our considerations has been given to the protection of the legitimate interests of organized labor, of the individual worker, and of the thousands of owners and managers of small businesses which are the backbone and foundation stone of American economy and free enterprise.

I wish to call your attention to the fact that the recent statement of labor policy announced by the NAM was introduced by a preamble calling for high wages based on high productivity; calling for working conditions that safeguard the health, dignity, and self-respect of the individual employee; calling upon management to bring about as high a degree of stabilized employment as practicable; and urging upon management the benefits of inviting a spirit of cooperation between them and their employees through a frank explanation to employees of policies, problems, and proposals of the company.

These objectives justify us in believing that our program is sound, constructive, and forward looking, and we are convinced that in enacting these principles into law Congress should and will have the endorsement and support of all segments of the American people.

It should and will have the support of all employers, large and small, sincerely interested in the chance to do a better job of labor relations in their own companies as a means of preserving competition and free enterprise.

Congress should and will have the support of large groups of workers, both union and nonunion, interested in maintaining their individual freedom to join or not to join labor organizations; to say when they will or will not go on strike; to produce to the limit of their will and capacity; and to participate without fear of reprisal in the decisions and conduct of their own unions.

Congress should and will have the support of all those leaders of organized labor seeking to rid the labor movement of irresponsible and subversive elements, who are genuinely interested in the promotion of greater responsibility on the part of organized labor; of all those interested in the promotion of genuine collective bargaining free from governmental interference or dictation; and especially of the great body of friends and well-wishers of organized labor in America who are anxious to see them win and retain the respect and support of the American people.

And, finally, Congress should and will deserve and have the overwhelming endorsement and support of the great body of American people—the consuming public—who look to Congress to provide measures conducive to industrial peace which will encourage the maximum production of goods and services, and which will maintain and preserve, vigorous and unimpaired, genuine competition in industry under our form of government.

The CHAIRMAN. The committee will adjourn until 10 o'clock Tuesday morning, at which time we will hear Mr. William Green.

(Whereupon, at 12:05 p. m., the committee adjourned until 10 a. m., Tuesday, February 18, 1947.)

LABOR RELATIONS PROGRAM

TUESDAY, FEBRUARY 18, 1947

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in the caucus room, Senate Office Building, Senator Robert A. Taft (chairman) presiding.

Present: Senators Taft (chairman), Aiken, Ball, Jenner, Ives, Thomas, Murray, Pepper, Ellender, and Hill.

The CHAIRMAN. The committee will come to order. We have with us this morning Mr. William Green, president of the American Federation of Labor. We will be glad to hear you, Mr. Green.

Senator MURRAY. Mr. Chairman, I have been requested by Senator Pepper to announce that he is ill this morning and is unable to attend the meeting. For myself, I wish to be excused at 10:30, as I have another appointment at that time.

The CHAIRMAN. Thank you, Senator. I understand.

Mr. Green, do you desire to read your statement first, or do you wish to be interrupted, or would you prefer to be questioned on it when you get through with one subject? What is your desire?

STATEMENT OF WILLIAM GREEN, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR, WASHINGTON, D. C.

Mr. GREEN. Senator, it will be perfectly all right with me for me to proceed with the presentation of my statement, and if any members of the committee wish to ask questions while I am going through it, that will be perfectly all right, or if you wait until I have disposed of one subject.

The CHAIRMAN. I suggest that you wait until you have disposed of one subject, then pause for questions on that subject. That is a little more orderly, I think, than to wait until the end of your statement. You may proceed.

Mr. GREEN. Mr. Chairman and members of the committee, the executive council of the American Federation of Labor designated a committee to meet with the Senate Committee on Labor and Public Welfare. The Members of that committee are myself, Vice President Hutcheson, and Secretary-Treasurer Meany of the American Federation of Labor. The others are here, Vice President Hutcheson and Secretary-Treasurer Meany, this morning as a committee from the American Federation of Labor.

In the statement I have filed with this committee I have analyzed in considerable detail the provisions of S. 55, S. 105, S. 133, S. 360, and Senate Joint Resolution 8

It was not thought necessary to go into the several other proposals before this committee dealing with legislation on labor relations, because most of these provisions are identical with or similar to those contained in the above-mentioned bills, and it is believed that the committee will have no difficulty in getting the position of the American Federation of Labor on all the proposals from the statement already filed. If, however, any member of the committee desires a direct expression on any particular bill, we should appreciate the opportunity of filing an additional statement.

My purpose today is to summarize the statements we have filed with you and present the view of the American Federation of Labor on those aspects of these bills I have mentioned, which appear to have been the subject of greatest public attention.

S. 55, FEDERAL MEDIATION BOARD

Title I of S. 55, introduced by Senators Ball, Taft, and Smith, provides for the establishment of a Federal Mediation Board. We have no objection to any extension of the conciliation and mediation functions of the Department of Labor. However, it does appear to be completely unnecessary to create yet another administrative agency to accomplish what can be well accomplished with existing machinery in the Department of Labor. We believe that a greater fund should be appropriated to the United States Conciliation Service instead of adding another bureau to deal with labor affairs. The trend toward diminishing the functions and powers of the Department of Labor has already gone too far and should be reversed.

Now, was there anything you wished to ask at this point?

The CHAIRMAN. Are there any questions on that section relating to the Board? I think not at the present time.

Mr. GREEN. Cooling-off period: Organized labor takes strenuous exception to the provisions in S. 55 forbidding any strikes during the period that the Board is seeking settlement of a dispute by mediation or conciliation or for the period of 60 days following intervention by the Board, whichever occurs first.

We have on several occasions explained the reasons for our opposition to the compulsory cooling-off period. First, we object to it on principle. It is an unjustified invasion of an essential liberty, the right to strike, and violates the spirit, if not the letter, of the thirteenth amendment prohibiting involuntary servitude. Second, it suggests what is completely untrue, namely, that unions call and engage in strikes at the drop of a hat, in a moment of heated excitement, without any consideration for the welfare either of union members or of the general public and without allowing any opportunity for governmental agencies to attempt mediation and conciliation. That suggestion, I repeat, is utterly false and contrary to the demonstrable facts. Third, it is impracticable. It has not worked in the past, as is overwhelmingly shown by our experience under the War Labor Disputes Act, and it will not work in the future.

Unions faced with such a legislative freeze will be forced, in order to avoid its harsh consequences, rapidly to develop their differences with their employers into full-blown formal labor disputes in order to invoke the services of the mediation and conciliation agencies and

immediately to start the 60-day period. Instead of a normal and friendly negotiation of differences which in the great majority of cases results in satisfactory agreements without any interruptions in work, negotiations would necessarily begin with a formal commitment to strike on the part of the union, made to insure compliance with the law. Such a situation would hardly be conducive to constructive bargaining results.

Finally, a 60-day waiting period would make many strikes completely ineffective. In seasonal industries such as the canning industry, to name but one of many, the producers could very well process an entire year's crop in a 60-day span. In the construction industry a major portion of the building or repair work which is under way could be completed in a 60-day interval; many entire factories have been constructed in approximately that time. In industries such as the record industry the record makers could cut and stock-pile sufficient records in a 60-day period to last for several years. And in all industries a 60-day waiting period would give the employer full opportunity to take all necessary steps to defeat the strike, thus depriving labor organizations of the timing element, the most important factor in the success of any strike.

The CHAIRMAN. Mr. Green, would the 30-day period meet any part of the objections of your organization to a waiting period?

Mr. GREEN. We do not think, Senator, that there is any necessity for any waiting period.

The CHAIRMAN. You say that unions do not strike at the drop of the hat. I would think that a 30-day period would not interfere with any reasonable action they would be likely to take. I think there is some reasonable objection to 60 days.

Mr. GREEN. That was a figurative expression, but usually the negotiations run over more than a 30-day period, and certainly during those negotiations there is a lot of time to cool off between employers and employees.

The CHAIRMAN. As I recall, the Minnesota experience of 30 days has been very good. Have you any comment to make on that?

Mr. GREEN. On the Minnesota experience?

The CHAIRMAN. The Minnesota 30-day waiting period.

Mr. GREEN. I am not familiar as to how it has worked there, but so far as I know there has not been any great injury done. But that is a State law.

The CHAIRMAN. Yes.

Mr. GREEN. Now, you take the national situation. That is different, and, as I say, we have the canning industry, for example, and we have other seasonal industries, we have a short period of time in the building construction industry, and all that means much to labor unions if they have to wait for some length of time.

Senator AIKEN. The waiting period of either 30 or 60 days would have very little value in any case where labor was operating under annual agreement, would it not—that is, the negotiations?

Mr. GREEN. I don't think so, Senator.

Senator AIKEN. Even before the 60-day period would begin, negotiations would have started.

Mr. GREEN. Yes.

Senator AIKEN. And the waiting period would certainly be of the greatest benefit to the employer and do the greatest injury to the union in the case of a seasonal industry.

Mr. GREEN. Oh, yes; the unions would suffer.

Senator AIKEN. What I am getting at is, it would have very little effect on annual contracts.

Mr. GREEN. On annual contracts?

Senator AIKEN. Yes.

Mr. GREEN. Well, perhaps not.

Senator BALL. Mr. Green, do you have very many strikes in the construction industry, as a matter of fact, over renewal of annual agreements? It seems to me that most of the strikes that are holding up construction projects, a lot of them, including the Georgetown Hospital here in Washington, are jurisdictional strikes over which union has jurisdiction over certain work.

Mr. GREEN. An annual contract?

Senator BALL. I say, I do not recall very many serious strikes in the building industry over renewal of annual contracts. The worst strikes in the building industry have been jurisdiction strikes.

Mr. GREEN. There haven't been many strikes in the construction industry. They have been very few, very limited.

Senator BALL. Do you think jurisdictional strikes do the labor movement any good?

Mr. GREEN. Jurisdictional strikes?

Senator BALL. Yes.

Mr. GREEN. Well, we all deplore jurisdictional disputes. We wish that they might be settled through direct negotiation, but after all, workers possess certain rights, and one of which is they cannot be forced to work against their will. That is the principle involved.

Senator BALL. I notice you say this bill violates the thirteenth amendment. I don't think you can make that stick, because the right to strike is the right to quit a job. Wouldn't you agree that a striker has the right to quit his job?

Mr. GREEN. In jurisdictional disputes, you are referring to now, aren't you?

Senator BALL. Well, I was talking about jurisdictional strikes. For instance, the Georgetown Hospital has been held up for several months now by a jurisdictional row between the carpenters and, I think, the metal workers.

Mr. GREEN. Well, those stoppages, of course, occur because each side is exercising their personal rights, but the whole of our movement is devoted toward the finding of a way by which we can reduce these jurisdictional disputes to a minimum.

Senator BALL. Don't you think a waiting period might help you to do that without stopping construction?

Mr. GREEN. No. I think we are making some success along that line, very great success, but we are no different than other people. You have jurisdictional disputes among other lines and other people outside of labor unions. That is characteristic of human nature, and you cannot avoid it.

Senator AIKEN. The most serious strike of the last year occurred at the expiration of a contract, not in construction, but the most serious strikes that have tied up the country's economy have occurred at the expiration of contracts. Do you hold that no law can require

a man to work after his agreement to work has expired? As I understand it, that is what you hold.

Mr. GREEN. That is right.

Senator AIKEN. And that if he quits work then he is not, in effect, going out on strike—he is simply refusing to go back to work at the expiration of the agreement?

Mr. GREEN. That is right.

The CHAIRMAN. Of course, we can avoid that by requiring them to give notice 30 days before the contract expires, which they should do. In fact, do you think it would be feasible to prescribe a time schedule in the statute to a greater extent than we have here? I mean, besides giving notice, prescribe that it shall be a certain length of time before the expiration of a contract? Do you think that would be feasible in law?

Mr. GREEN. It might be feasible in some industries, but as I have pointed out, Senator, in doing those things we cannot jeopardize the interests of the working people. For instance, as I said, in the canning industry, seasonal industries, and others, you would not want to impose on the workers a condition that would jeopardize their interests and call upon them to sacrifice their rights.

The CHAIRMAN. It rather seems to me that canning-industry disputes ought to be settled well in advance of the season. They handle perishable crops, and disputes should be settled beforehand.

Mr. GREEN. They should. We will agree on that.

The CHAIRMAN. There ought to be no sudden strike in the middle of the season.

Mr. GREEN. Special efforts ought to be made to settle the differences.

Senator ELLENDER. Mr. Green, I realize that labor in the past has always opposed these bills. But as Senator Taft has just said, what would be the real objection to a provision in the law stating that during any contract between management and labor, say 60 or 30 days, due notice shall be given of any changes or adjustment of differences before it expires? What would be the objection to such a provision?

Mr. GREEN. Well, Senator, as a rule the employers and employees meet in advance of the termination of a contract for the purpose of negotiating a new agreement to take place when that contract expires.

Senator ELLENDER. Well, it would be practical to have such a provision written into the contract or the law itself; would it not?

Mr. GREEN. You mean a provision that would give 30 days' notice before the contract expires?

Senator ELLENDER. Yes; within 60 or 30 days, whatever time would be the more logical.

Mr. GREEN. That is a different thing. You might give notice, but if we don't negotiate an agreement before the contract expires a strike will take place.

Senator ELLENDER. I understand, but my idea would be to have the so-called cooling-off period take place within the life of the contract.

Mr. GREEN. At the expiration of the contract?

Senator ELLENDER. No; within the life of the contract.

Mr. GREEN. Well, I don't know how you would do that.

Senator ELLENDER. I have such a provision in S. 404, section 3 of the bill I have introduced, entitled "Notice to terminate or change contract." I don't know whether it covers this particular provision in your statement, that is why I ask you what objection, if any, there

would be to such a provision being written in the law. It is my contention that management and labor should signify in their contract that notice within a certain period, 60 or 30 days, or even 15 days, shall be given, so that within the period of time the parties may get together for collective bargaining, and if they cannot agree, resort to the other machinery set forth.

Mr. GREEN. Before the contract expires?

Senator ELLENDER. Yes.

Mr. GREEN. That is a little different than the proposals I have heard.

Senator ELLENDER. Yes; that is why I bring it up. It is within the life of the contract rather than at the expiration of the contract.

Mr. GREEN. Restrictions on payments to unions and union representatives: Section 201 of title II of S. 55 apparently is an attempt to prevent bribery of union officials and to restrict and regulate the establishment of so-called welfare funds. These objectives are achieved by a blanket and sweeping prohibition against contributions or payments of any sort by employers to unions or union representatives followed by an enumeration of certain limited exceptions to the prohibition. These exceptions, however, are so narrow and so limited as to leave open for prosecution a vast number of innocent and customary transactions between employers and unions or union representatives. Among the most important of these customary transactions is the dues-check-off arrangement established through the process of collective bargaining.

In 1945 slightly over 5.3 million workers, or about 39 percent of all employees under agreement, were covered by check-off provisions. Not only is the check-off a relatively common provision but it is one of long standing, existing for more than 40 years in some industries. There is no question but what the thousands of such presently existing check-off agreements would be outlawed by section 201. I am advised by counsel that under principles of contract law there is a strong possibility that should the check-off provision in such agreements be rendered illegal by statute then the parties to the agreement would have the right to consider the entire agreement at an end. Since there has been no serious criticism of the check-off arrangement on moral or other grounds, it seems of doubtful wisdom even to risk the automatic termination of so many collective agreements which assure stability in industrial relations and continued production of necessary commodities.

If, indeed, it is bribery alone which the proponents of the bill seek to prevent, it would easily have been possible to limit the prohibitions to actual bribery attempts by specific definitions rather than to sweep customary and innocent transactions into a legislative catch-all. It is wrong, however, to assume any need for Federal legislation in this field. Section 8 (2) of the Wagner Act already forbids financial contributions to unions, and existing State laws are adequate to deal with other such abuses.

Turning now to the restrictions on welfare funds, it is to be noted that such welfare funds can be established only for certain limited purposes. Conspicuously absent from the list of purposes to which a welfare fund may be applied is that of providing unemployment benefits. There are funds in existence today which do provide for benefits to unemployed workers or create jobs for such unemployed workers. Should this bill become law, those funds must be termi-

nated or else persons participating in them are subject to a fine of not more than \$10,000 or to imprisonment of not more than 6 months, or both. There is no reason why the union should not be able to establish and administer funds to guard against the constant risk of unemployment resulting from technological displacement and other reasons. Management is always the first to cry out against strikes conducted against labor-saving devices. Under section 201, labor is prevented from attempting, through the process of collective bargaining, to achieve a condition which will make such strikes unnecessary.

The CHAIRMAN. Mr. Green, I agree that the provision may be too broad in this bill on check-off, but there are a great many check-offs, apparently, where the agreement itself provides that authority must be furnished by the individual employee. Do you object also to a provision that there should be no check-off unless the employer is furnished with written authority, or something of that sort, from the individual employee?

Mr. GREEN. Well, as a rule the employer is advised by the union regarding the check-off for dues.

The CHAIRMAN. There are two kinds of agreements, as I understand it. One simply arbitrarily says there will be such and such a check-off, and no employee has anything to say about it, no member of the union has anything to say about it. The other is one that requires the employer to be furnished with authority from the particular member of the union who is being checked off.

Mr. GREEN. That is under maintenance of membership.

The CHAIRMAN. Well, that may be. That goes along with the maintenance of membership agreement, perhaps, but do you object to any restriction on the power of the union to fix the check-off rate without consulting its members?

Mr. GREEN. That is the responsibility of the union to do that, Senator. Would your bill prevent the check-off utilized and used by employers for their own personal gain and benefit?

The CHAIRMAN. Used by employers? How could they use it? They can't deduct unless they get dues. If they try to deduct something for their own personal gain and benefit, they can't do that.

Mr. GREEN. Let me tell you that in many of the mining industries of the country the employer applies the check-off with a vengeance. The miner has no credit. He deals at the company's store, and the company deducts, checks off the company store bills from the employee's pay.

The CHAIRMAN. Well, the company store evil may be an evil, but that is not a check-off.

Mr. GREEN. That is what it has always been called.

The CHAIRMAN. They buy the goods from the store and that is the way they pay for the goods. Whether they are paying too much for the goods is the only question involved there. Obviously, the employer can take out the bills for goods.

Mr. GREEN. Shouldn't he be prevented from doing that? If he sells goods to a customer and gives him credit, shouldn't the man be allowed to pay for the goods?

The CHAIRMAN. That may be. That is a suggestion I had not heard. I am perfectly willing to consider that.

Mr. GREEN. In West Virginia, in those isolated mining camps, there is many an employee who never draws a penny. He is always in debt

to the company store, and what he owes the employer is checked off his pay, and that is where it really originated.

The CHAIRMAN. That relates to the company, to the company store. The way to meet it would be to abolish the company store altogether, if that is an evil, it seems to me. I don't see that it has anything to do with the question of whether the employer should be directed by the union to take out 10 percent or 5 percent or 2 percent, and be forced to do so, although the individual himself has never given him authority to do it.

Mr. GREEN. The only union regulation applies to death benefits and such as that, and that is usually worked out between the union, the contracting party, and the employee.

Senator AIKEN. Actually, Mr. Green, the operator of the mine would have no right anyway to deduct this money from the miner's pay check unless he had an order from the miner authorizing him to do so, would he? He could not arbitrarily take out for debts from the weekly or monthly pay-check, however they pay.

Mr. GREEN. I am not sure whether there is a legal question involved there or not.

Senator AIKEN. It is probable that he gets the miner to sign a sort of a blanket order.

Mr. GREEN. I do know it is practiced very extensively in the coal-mining sections of the country.

Senator ELLENDER. We have had some evidence to the effect that this system was used, not to pay the dues to the local but to the international. Do you think that is right?

Mr. GREEN. To the national?

Senator ELLENDER. To the international.

Mr. GREEN. The international organization?

Senator ELLENDER. Yes. Should such a procedure be resorted to without the consent of the member, or of the union itself? Don't you think consent ought to be obtained?

Mr. GREEN. You have raised a question that I am not familiar with, but it is my understanding that the dues check-off is turned over to the local office.

The CHAIRMAN. In the case of the United Steelworkers, however, it goes directly to the international union, according to testimony we have had here. The matter was not gone into very thoroughly, but that was the testimony, that it went directly to the international union, and that such funds as the local union got, they got back from the international union.

Mr. GREEN. Then the international union would turn back to the local their share of that?

Senator ELLENDER. That is right.

Mr. GREEN. I don't know anything about that.

Senator ELLENDER. Your position would be to leave the question of check-off to collective bargaining?

Mr. GREEN. Yes

Senator ELLENDER. Between management and labor?

Mr. GREEN. Yes, collective bargaining between management and labor.

Senator ELLENDER. To what extent does the union itself consult with its members in reference to the check-off?

Mr. GREEN. Well, my opinion is that it discusses it very thoroughly at union meetings, and it develops out of discussion at the union meetings and through understanding arrived at at the union meetings.

Senator ELLENDER. Is it your experience that the question has been voted upon and acted upon by the union before it is submitted to collective bargaining?

Mr. GREEN. Yes; approved by the union. It is a part of its traditional functions.

The CHAIRMAN. Are there any other questions? If not, you may proceed, Mr. Green.

Mr. GREEN. Prohibitions against boycotting and other unlawful combinations or conspiracies: Section 204 contains the most objectionable provisions of the entire bill; its provisions are indeed startling. It not only makes secondary boycotting, striking and picketing illegal, but restores the entire doctrine of criminal conspiracy so abused in the past. In addition, it outlaws strikes by minority groups under any and all circumstances and regardless of possible provocations. Finally, in connection with the removal of the limitations of the Clayton and Norris-LaGuardia Acts, it uses language which can quite easily be construed to outlaw any strike or picketing which operates in any way to restrict production or distribution in interstate commerce.

The foregoing objectives are achieved under sections 204 (a) (1), 204 (a) (2), and 204 (e). It is necessary to discuss each of these provisions separately in order to appreciate their full significance and implication.

Section 204 (a) (1) provides that it is unlawful to engage in any combination or conspiracy through strikes or threats of strikes, or any other refusal to work on or handle specific articles or materials, for the purpose of requiring an employer to cease using, selling, handling, or transporting the products of any other producer or manufacturer. Under this, the so-called secondary boycott in all its aspects is prohibited under threat of fine or imprisonment, liability for triple damages, and use of the injunctive process. Workers can no longer refuse to deal with employers whose practices may lead to the ruination of their working conditions; they cannot refuse to deal with or work for anyone who does business with or otherwise assists unfair employers.

Only an enraged and vindictive determination to punish labor, no matter what the effect on labor's and the entire public's welfare will be, can explain this proposal. It simply ignores and confounds the most elemental realities of the free enterprise, competitive system. Whether intended or otherwise, this proposal, if enacted, would go far toward restoring the intolerable evil of the sweatshop and all of the disastrous economic consequences that the sweatshop implies. That is so because in many instances it is impractical or impossible for a host of reasons to establish decent work standards save by peaceful, economic pressure brought to bear on the customers or suppliers of unfair employers. The operation of a substandard plant means that the fair and humane employer, anxious to maintain decent work standards and adequate mass consuming power, must, out of pressure of competition, either be forced out of business or abandon his fair and humane practices. It means the decimation of one of the most

constructive contributions made by organized labor to American progress and the American way of life, namely, the elimination of competitive advantages based solely on the crude exploitation of human beings. It means, finally, that the working people of this country would be compelled by law themselves to destroy the standards of living achieved over the years.

Until employers in their business relationships are prepared to give up their right to refuse to deal with anyone whose business practices are detrimental to them, unions will not be prepared to give up their right to refuse to deal with any employer whose labor practices are detrimental to the interests of their membership. And certainly, it is difficult to see any moral or economic justification for requiring labor to assist in its own destruction as by working upon non-union-made goods. As stated by Justices Brandeis and Holmes in the Duplex Printing Press Co. cases:

May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it? * * * Courts, with better appreciation of the facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself * * *. It is lawful for all members of a union by whomsoever employed to refuse to handle materials whose production weakens the union.

Section 204 (a) (2) makes it unlawful for employees to engage in a strike for recognition or for improvement in wages, hours or working conditions in all cases where the employer is not required to recognize or bargain with such labor organization under the provisions of the National Labor Relations Act. In other words, this would operate to make unlawful all strikes or other concerted action of minority groups, because under the Wagner Act the employer need recognize only majority unions.

In cases where organization of employees has not extended to the point where a majority have chosen a union, the minority employees who do belong to a labor organization would be unable to resist wage cuts by strike action, would be unable to attempt to improve their wages or working conditions or adjust grievances by strike action, and even would be foreclosed from striking in protest over unfair practices of employer, no matter how excessive, abusive or unlawful. Minority groups simply would have no standing for any purpose whatsoever insofar as their right peacefully to withdraw their employment in concert is concerned. Certainly, it is the basic right of any citizen of a free country to cease employment at any time that any given conditions become intolerable to him and he can do that singly, or in the company of a minority of his fellow workers, or in the company of all of his fellow workers. Accordingly, any flat limitation upon that right as to any group of employees, be they a minority group or a majority group, is intolerable in a free, democratic society, and certainly would be unconstitutional if the thirteenth amendment has any meaning. As stated recently by the Supreme Court of Alabama in *Alabama State Federation of Labor v. McAdory et al.* (246 Ala. 1) :

We are persuaded, also, that that part of section 13 of the act, making it unlawful to strike except when it is authorized by vote of the majority of the regular employees working in the business, plant, or in such unit thereof, expressed by a secret ballot, cannot be sustained. As we have previously noted, each individual employee has a right to strike for a legally justifiable purpose,

and such a right, of course, rests upon a minority as well as upon a majority.

Of course, as we have observed, the right to strike or to refrain from work is a personal individual right. Reduced to its last analysis, therefore, the question arises as to the reasonableness of a regulation making the right to strike dependent upon the will of others who may not in any manner be connected with, or interested in, the welfare of the minority group. Indeed, these other employees may not belong to or believe in a labor organization.

We are all convinced that a prohibition to strike placed upon a minority group, unless sanctioned by secret ballot of others who are without interest in their welfare is an unreasonable and arbitrary restraint and must be stricken down.

That was not a supreme court in a Northern State. That was in the State of Alabama.

The CHAIRMAN. A good argument against the constitutionality of the Wagner Act.

Mr. GREEN. Against the constitutionality?

The CHAIRMAN. I don't see how you can have it both ways. If you can take away the right of a minority to be represented, you can certainly take away their right to strike. You have either got to abandon the Wagner Act entirely or you have to admit to limiting the power of the minority.

Mr. GREEN. That philosophy is contrary to the announcement of this decision.

The CHAIRMAN. I think any court would hold that under that decision the Wagner Act is unconstitutional. Following that logic the Wagner Act is out.

Mr. GREEN. Section 204 (a) (1) would operate also to outlaw so-called jurisdictional strikes under any and all circumstances.

To begin with, many jurisdictional strikes involve the right to do a certain type of work, and hence the right to earn a livelihood, particularly in times of depression or in times of an overcrowded labor market. When striking is the only alternative to starving, are such strikes to be outlawed? Until and unless our society is prepared to provide employment for all who are willing to work, attempts to outlaw the jurisdictional strike can have no moral justification.

In all events, the American Federation of Labor has made great progress through the years in establishing the machinery to effectively avoid and resolve jurisdictional disputes without interruption to production, and these disputes are thereby settled where they should be settled, namely, in the house of labor itself.

Subsection (e) of section 204 removes the substantive protections of the Clayton Act in respect not only to boycotts but in respect to alleged conspiracies to restrict production or distribution.

It should be carefully noted that the provisions of the Clayton Act and the Norris-LaGuardia Act are removed, not only insofar as alleged secondary boycotts and minority strikes are concerned, but in addition, in respect to any conspiracy to restrict production, distribution, or competition, or impose restrictions or conditions upon the purchase, sale, or use of any material, machines or equipment. Under the phrase "conspiracy to restrict production" or restrict "use of any machine or equipment," any ordinary strike for any ordinary labor objective is declared unlawful, a step far beyond what has ever been attempted before, even in the worst days of prosecution of labor unions under the antitrust laws. That such a proposal is actually being made may seem unbelievable, but the literal language of subsection (e) can

admit of no other conclusion. The era of government by injunction will have been revived with a vengeance.

Taken in its entirety section 204 has effectively nullified every pro-labor decision that has been rendered since the enactment of the Norris-LaGuardia Act. The act was the first comprehensive labor code enacted in this country. It was the subject of several years of the most exhaustive study and hearings ever had on a labor bill. It sought to remedy the accumulated mistakes of half a century, and to set forth a basic, fair policy for the future of industrial relations in the country.

Section 204 of S. 55 repudiates 50 years of history upon which the Norris-LaGuardia Act was premised. It is a viciously arbitrary retrogression which cannot be condemned too severely. The advance, the struggle, the study, the experience of some 50 years would be entirely negated by section 204.

The CHAIRMAN. Mr. Green, I can only say that many of the things you claim would result here are certainly not intended.

Mr. GREEN. I think that. I do not think they ever were intended.

The CHAIRMAN. I don't think there is much use in arguing the legal questions, with some of which I will disagree. I can only say that we will give careful consideration to all of these claims, and if there is justification for those views, there are many cases in which we will limit them. I want to make that general statement.

I would like to say as to the jurisdictional strike, which troubles me a good deal, do you think the A. F. of L. has been successful in eliminating jurisdictional strikes? Isn't there some action we should take to supplement the arbitration machinery that has been set up?

Mr. GREEN. Well, Senator, time and experience are great teachers. We learn much from our experiences in life, and we have found from our experience that jurisdictional disputes can best be settled and handled by the organization with which those involved in the jurisdiction of dispute are associated.

The CHAIRMAN. But suppose they are not? Aren't there still existing many jurisdictional questions that are causing constant difficulty, that are not settled?

Mr. GREEN. There are some.

The CHAIRMAN. I was told by someone, a contractor, I think, from Cincinnati, about 10 days ago that today there are some 20 or 30 strikes going on because of a jurisdictional fight between the common laborers' union and the carpenters' union on the question of who has the right to tear forms off of concrete cores, and that that is seriously holding up many projects throughout the United States today; that the decision has been made, but they will not pay attention to it. For example, should we not perhaps set up appeal machinery from the union board to determine the question, perhaps the National Labor Relations Board—that seems to be within their scope—who is the proper bargaining agent for certain types of work. They have always avoided it; but couldn't they be given sort of an appellate power from the union board, something of that kind?

Mr. GREEN. Senator, I am dealing with the subject from a practical standpoint and from what I have learned in my life's experience in the labor movement. Human beings are human beings. If we have difficulty in finding a way to settle these jurisdictional disputes through voluntary action, by getting both parties to agree to submit

the jurisdictional dispute to a referee or an arbitration board, and agree to abide by the decision, how much more difficult it would be if you should try to compel them to do this by law. It is not an easy matter to compel human beings, exercising their free rights as free American citizens, to accept some compulsory decision.

The CHAIRMAN. That is true, of course. I realize the difficulty, but it is a perfectly defeatist approach which, in effect, says to the country: "We can do nothing to prohibit illegal strikes."

Mr. GREEN. How would you make them do it, Senator?

The CHAIRMAN. Well, I think there is a better way that a decision could be made.

Mr. GREEN. Would you put them in jail?

The CHAIRMAN. Some way should be found to avoid the inconvenience and suffering from an illegal strike.

Mr. GREEN. Would you put them in jail?

The CHAIRMAN. No; I would not put them in jail.

Mr. GREEN. Would you impose a heavy fine or put them in jail?

The CHAIRMAN. If you decide that the employer, for instance, must give a certain type of work to one union, union A, and not to union B, and he gives it to union A and union B strikes, I should think that he ought to be able to give union A all of union B's work.

Mr. GREEN. If our great movement took the position that it could do nothing about the exercise of these rights, including the right to fight each other, and to engage in jurisdictional strikes, the situation would be different. But such is not the case. The whole influence of our 7,500,000 members is centered in finding a way to eliminate jurisdictional disputes. That is our policy, our fixed, traditional policy, and we are putting into it all we have got, in order to find a way to settle jurisdictional disputes.

Senator ELLENDER. But you don't seem to be succeeding very well.

Mr. GREEN. I think we have been doing fairly well. We are settling dozens of disputes every week. Actually jurisdictional strikes have been very few. It could be worse, Senator. You know that. Now remember, a man fighting in a jurisdictional dispute really believes he is fighting for his job—"This is my work. It belongs to me and to my craft. I am going to fight to have it, because if I don't get it I will be unemployed."

Senator ELLENDER. Who determines the jurisdiction of a craft union, the main union or the local union? How do you do that? You might approach it that way.

Mr. GREEN. The American Federation of Labor defines the jurisdiction of unions chartered by the American Federation of Labor.

Senator ELLENDER. Well now, evidently somebody is violating whatever authority he gets from the American Federation of Labor. If you say that craft union B shall do so and so, and this same thing is done by another craft union, it must be in violation of a definition made by the union itself. Why can't you do something about it in that direction?

Mr. GREEN. It is not so much that way, Senator.

Senator ELLENDER. Take the example that Senator Taft just presented to you. Why can't you do something about that?

Mr. GREEN. Well, it is not so much that there is any violation of the jurisdiction originally granted, but many changes take place in

our modern world after the jurisdiction has been granted the international union. New techniques, new machinery, new materials are brought in and used.

For illustration, in the beginning and for years and years in the interior of a building they used wood trim around the bottom of the wall, wooden doors and so on. Well, in due course of time they found that metal trim was better than wood, more artistic and more enduring.

The United Brotherhood of Carpenters had been given the jurisdiction of putting that wood into the building. Their skilled workers did it, and they did it well. When the change came and metal trim was introduced, the metal-trade organizations claimed that work. The carpenter insisted "that is my work, because it is nothing more than a change in material. The work is the same." We had a jurisdictional dispute over that that perplexed us, and finally it was worked out.

Senator ELLENDER. I don't see why your agency could not have settled that.

Mr. GREEN. Sure.

Senator ELLENDER. Because both unions consult you, the mother union.

Mr. GREEN. The metal trade workers and the carpenters were fighting for their jobs.

Senator ELLENDER. Well, as far as I can see there is absolutely no excuse for any jurisdictional strikes along the lines you have suggested, none whatever. Something ought to be done to correct it, if you won't do it.

Mr. GREEN. You would have to live a little closer to the picture, I think, in order for you to understand it. Your judgment is based upon your academic study of it, but if you get up close to it you will change your mind.

Senator ELLENDER. I have been a member of the Senate now for 10 years, and I have held hearings, as you know, for days and days. This condition has existed right along, and it still exists and there is no excuse for it, especially where both crafts belong to the same mother union.

Mr. GREEN. We have it in all walks of life, and it causes us all lots of trouble.

Senator ELLENDER. I may be mistaken about this, Mr. Green, but I remember reading that the federation thought along the same line as the President about secondary boycotts and jurisdictional strikes. Now, to what extent do you think something ought to be done in respect to correcting these evils of secondary boycott and jurisdictional strikes?

Mr. GREEN. You probably refer to a statement I made.

Senator ELLENDER. Yes; I remember reading somewhere that you were in accord with it, and you were hopeful that Congress would go along with it, something to that effect. I would like to get your view on what action you consider necessary to correct the evil of the jurisdictional strike and secondary boycott complained of by the President.

Mr. GREEN. First of all, Senator, may I say with emphasis that we deplore jurisdictional disputes.

Senator ELLENDER. But that doesn't help matters.

Mr. GREEN. And we are committed to a policy of trying to find a way of settling them without any strikes. That is the traditional, fixed policy of the American Federation of Labor, but in that statement I did not refer so much to the question of jurisdictional disputes, other than to state that we deplore them and are determined to end them as soon as possible. What I referred to more particularly was the President's recommendation that instead of passing legislation, ill-considered legislation, a committee, representing Congress, and the public, and labor, should be created for the purpose of making an exhaustive study of the whole thing.

Senator ELLENDER. As I recall now, you specifically mentioned jurisdictional strikes and secondary boycotts. You may have been misquoted. I don't know about that.

Mr. GREEN. I was misquoted in that, because I referred to the appointment of a committee to study the matter.

Senator ELLENDER. I was under the impression, then, that the American Federation of Labor, as well as the CIO, would come in and help us to draft some legislation that would cure those evils.

Mr. GREEN. I am glad to correct that wrong impression. We see more evil in the measures that have been proposed.

Senator BALL. Mr. Green, so far as I am concerned, I think this section to which you are referring, on jurisdictional strikes, was aimed far more at strikes which occur when two unions are involved, each claiming a majority of the employees, and one or the other strikes to compel the employer to bargain with them, instead of going to the NLRB for an election. How about that type of jurisdictional strike? Don't you think the solution there is not to let them strike but to have an election and let the employees decide themselves which union they want?

Mr. GREEN. I am glad to refer to that, Senator. That is one of our headaches. That is a dispute between rival unions, and it should not be, and for that reason we have appealed to our rival to come back to the home house of labor, and end this rival jurisdictional fight to which you have referred. Sometimes that will happen, and then we will end these disputes. It is unfortunate. We deplore it; but I see no way of correcting it so long as the two rival organizations continue the fight.

Senator BALL. Don't you think Congress ought to stop it and say, When you have that kind of a situation you must settle it by an election, by a majority of the employees?

Mr. GREEN. I might ask you again, Senator, how are you going to do it?

Senator BALL. I think we can pretty effectively stop jurisdictional strikes. We can make them pretty expensive.

Mr. GREEN. I would like to see your plan on that.

Senator BALL. I think that section does it.

Mr. GREEN. I have arrived at the conclusion that what we need is a united labor movement in the country, just as we have a united government, just as we have the United Nations. That is my opinion.

Senator BALL. You don't think Congress should try to do anything about it?

Mr. GREEN. No.

Senator BALL. You are familiar, Mr. Green, with this IBEW case up in New York?

Mr. GREEN. With which case?

Senator BALL. The IBEW, the local case up in New York.

Mr. GREEN. I have heard something about it.

Senator BALL. Where your local up there has boycotted, used the secondary boycott to exclude any electrical equipment made outside the New York area from the New York market. Do you think that is a justifiable use of the boycott power?

Mr. GREEN. Well, I would have to know what all the facts were before I could express an opinion. If it is an area boycott it could not be approved; but if it is a boycott against the use of goods produced under almost sweatshop conditions, then it is thoroughly justified.

Senator BALL. It is a boycott against goods produced by other IBEW locals in a great many cases, as well as CIO unions.

Mr. GREEN. You probably have assembled those facts and made an investigation. I confess I am not so familiar with that. For that reason I could not express an opinion on that, because I do not know. But, on the principle of area or geographical—

Senator BALL. You do not think that is justified?

Mr. GREEN. You would have to know the facts.

Senator BALL. How about some of your own AFL building trades which are boycotting handling of materials having the CIO union label?

Mr. GREEN. Well, that grows out of the rival fight; yes. It is the same way as the—

Senator BALL. We did not create the rival fight, but what is Congress going to do about it? It is an interference with commerce.

Mr. GREEN. What can you do about it? You cannot compel workers to work against their will. They still reserve the right to quit.

Senator BALL. They can quit. But I think we can stop secondary boycotts.

Mr. GREEN. There is the difficulty.

Senator BALL. What do you think of this use of the secondary boycott which is occurring in a great many cities today where a union—the teamsters, I think, have done it more than any other—did not even bother to try to organize employees of their employer? They have simply gone in and demanded he sign a closed-shop contract. Sometimes they will try to organize his employees who will not join—getting above the union scale in one case I know of—so then they put a banner out in front of his shop and the teamsters refuse to deliver or take away anything. Pretty soon the employer is facing bankruptcy, so he is compelled to sign a closed-shop contract, and compels his employees, against their will, to join this union.

Do you think that is sound union practice?

Mr. GREEN. Well, you bring to me isolated cases.

Senator BALL. That is not an isolated case. That is occurring in hundreds of situations today.

Mr. GREEN. Not general; that is not general.

Senator BALL. It certainly is.

Mr. GREEN. It is practiced locally and by maybe one or two organizations out of the hundreds and hundreds affiliated with the American

Federation of Labor. You would have to know the facts in all these cases.

The CHAIRMAN. We had detailed testimony of that all through last year.

Mr. GREEN. What?

The CHAIRMAN. We had detailed testimony of that all last year, and this year, before this committee. The evidence is all here.

Mr. GREEN. Is it general?

The CHAIRMAN. About that kind of secondary boycott.

Mr. GREEN. Does that happen among all our unions?

The CHAIRMAN. It happens all over the United States, yes. I do not say they are your unions any more than CIO unions. I am not criticizing any particular union. It seems to be a practice that has arisen to force—

Mr. GREEN (interposing). The purpose of the boycott must be taken into consideration, Senator, and if it is a good purpose, then it is justifiable; if it is not—

The CHAIRMAN. Suppose it is not a good purpose. Then, are we justified in legislating against it?

Mr. GREEN. But, then you are confronted with the other problem of how you are going to do it. I think we have to do that in the house of labor. I think we have to, if it is to be dealt with.

Senator BALL. You do not think that we, as Members of Congress, have any responsibility to the people?

Mr. GREEN. Yes; you have responsibility; but, after all, there are certain basic fundamental constitutional provisions that even Members of Congress must respect. One is that involuntary servitude shall not be imposed on any individual except as a punishment for crime.

Senator BALL. There is no bill pending before this committee which would impose involuntary servitude, as you know very well.

Mr. GREEN. If you make him work against his will, what is that?

Senator BALL. We do not make him work. He can quit his job any time he wants to. No employee, even though he goes on strike, is quitting his job. In fact, the Wagner Act specifically says he is still an employee when he is on strike.

Mr. GREEN. But if the strike is illegal, then he is compelled to work in order to refrain from violating the law.

Senator BALL. He can still quit.

Senator AIKEN. Mr. Green, you referred to some trouble in the teamsters' union. Just what is the justification for the teamsters' union undertaking to force shopkeepers or farmers to join their union? What reason is given for that?

Mr. GREEN. To stop members from—

Senator AIKEN. We had one case where they claimed farms using mechanical milking machines were not farms but industrial plants. You have mentioned the attempt to require shopkeepers to join the teamsters' union.

What is the justification for any union going outside of their own jurisdiction, you might call it, and attempting to force people engaged in other occupations to join that union?

Mr. GREEN. Well, Senator—

Senator AIKEN. I think that that practice has brought a great deal of discredit down on you, much of it unjustifiable. But, nevertheless,

it is there. We have to recognize that that situation does exist, and it is being held against all unions.

Mr. GREEN. Well, that is based upon the very close economic relationship that exists between the workers to whom you refer and the teamsters' union.

For instance, you might ask the question, "Why should those who work in a dairy be required to be members of the teamsters' union?"

Senator AIKEN. That is one question I do ask.

Mr. GREEN. The teamsters drive trucks, and the dairy workers process the milk inside the dairy. Well, that is based upon this fact, that the teamsters are the key people employed in that industry. They deliver to and haul from the dairy. The worker inside the plant, producing and processing inside the plant, has a close economic relationship between himself and the teamsters, and in order to lift their standard of life and living to high and still higher levels, they join with this key organization in order to help lift it.

Senator AIKEN. They are forced to join. I do not agree that the teamster is the principal factor in the dairy industry. I think the farmer is, by far, the most important man in the dairy industry.

Senator JENNER. How about the cow?

Mr. GREEN. I agree that the farmer is very important. There is no argument on that.

Senator AIKEN. And I do believe that they are hurting all unions when they indulge in those practices.

I have read the reports of the efforts made to force shopkeepers, particularly the butchers, to join the teamsters' union, and I have often wondered what justification they had for that. To one who does not know the facts, it looks as if they were attempting to find new sources for more dues.

Mr. GREEN. I know nothing about where the butchers are compelled to join the teamsters' union.

Senator AIKEN. I believe it was in the Detroit area that that was attempted, and finally the butchers did get an injunction under the State law.

So, I am just trying to inform myself as to the reason for these actions.

Mr. GREEN. It is for the reasons that I have just set forth—because of the very close economic relationship that exists, and because the teamsters have helped and can help the dairy workers to get higher wages and better working conditions. That has been proven through experience. And the same is true in the canning field.

Senator AIKEN. But when the dairy workers vote against joining the union, and then a boycott is declared against the dairy, it does not seem to me that that is quite the fair way to go at it.

Mr. GREEN. Well, we can perhaps say that you look at it that way. But I continue to express the opinion that unless I knew the details of the case I cannot express an opinion.

The CHAIRMAN. Mr. Green, there is one case that you apparently say is all right, and I wondered what you would do with it. The National Labor Relations Board holds an election, perhaps gets a majority, and certifies a union.

Mr. GREEN. Yes.

The CHAIRMAN. Then, the minority is not satisfied, and they strike and picket the plant. You say that is all right; that it cannot pos-

sibly be prevented. Do you not think we ought to do something about it? I mean, if we are going to permit that, ought we not to abandon the Wagner Act altogether?

Mr. GREEN. The minority pickets the plant after the election is decided in favor of the majority?

The CHAIRMAN. Yes; we have a case in California where one union was certified and the other union—I think it was an AFL-CIO fight—whichever it was, proceeded to picket the plant and closed it up tight. Of course, the employer was prohibited by law to deal with that minority.

The individuals who do not like the conditions might strike, but ought we not, if we are going to have a Wagner Act at all, to say that everybody is bound by the decision of the majority of the employees? Ought we not to prohibit the minority then from coming in and insisting that it be recognized as against the provision of the law?

Mr. GREEN. Senator, I do not know about a case like that. But I do know generally, and almost universally, the decision on an election is accepted, and the Board certification of those who vote for the selection of a collective-bargaining agent by a majority vote is accepted by both sides.

The CHAIRMAN. I understood your argument, in the first part, to state clearly that that minority must have the right to strike and that we should not in any way interfere. Is that right?

Mr. GREEN. Of course, for legitimate rights.

The CHAIRMAN. Who is going to decide what the legitimate rights are?

Mr. GREEN. The principle of the right to strike. But, when a decision is made by the National Labor Relations Board, and a collective-bargaining agent has been selected, then, of course, there is no choice under the law except that perhaps they may have some resort to an appeal of some kind. That is all.

Senator ELLENDER. Mr. Green, you surely must be acquainted with the condition in the city of New York in respect to the installation of electrical appliances. We have had evidence presented here for the past 4 or 5 years, I would say, to the effect that the IBEW controls not only the manufacture of all of these materials, but even controls the salesmen, the stores, and those who bring these materials to the place where they are to be installed. And, any other material coming in from any other source just simply cannot pass the mark.

We have had other cases cited, for instance, here in Lima, Ohio, where neon sign making was done by a CIO group of workers, management was forced to accept those CIO employees. They were directed to do it by the National Labor Relations Board. We have evidence to show that AFL workers refused to put those neon signs in Pittsburgh or Chicago or any other place where CIO were employed.

Do you think that is right?

Mr. GREEN. Well, that is unfortunate. I would put it that way.

Senator ELLENDER. I know it is unfortunate, but do you not think Congress ought to do something to correct the evils of that kind?

Mr. GREEN. After all, this is a fight between two rival organizations.

Senator ELLENDER. Who suffers, the public?

Mr. GREEN. It is a fight for jobs.

Senator ELLENDER. The public suffers. And both unions utilize the laws that we put on the statute books to maintain their personal antagonisms.

Well, it impresses me very forcibly that in that connection labor should not take a negative attitude, but assume a definite responsibility to correct it.

Mr. GREEN. Senator, it is a fight between the two rival organizations, that case that you have just brought up.

Senator ELLENDER. That is but one of the cases. The same condition prevails in New York with the IBEW. That practice is inexcusable.

Mr. GREEN. You may think so. But, after all, they are fighting for jobs for their members.

Senator ELLENDER. But the public pays mighty dearly for their personal differences; and they can alibi their motives, because they are acting under laws passed by Congress. I really believe that something must and should be done to correct such evils.

Mr. GREEN. It is like the fight in Georgia for two governors.

Senator ELLENDER. That decision will be settled by the courts.

Mr. GREEN. Where will that be settled? It is going on anyhow.

Senator ELLENDER. This other condition has been going on for 10 years. It has not been settled yet.

Senator IVES. I may be getting into a rather leading question, but I think we ought to get ourselves oriented a little bit.

I take it, from what you say, that you are opposed to any change in any statute which in any way has any bearing on jurisdictional disputes.

Mr. GREEN. We think that that bill that is proposed is inadequate; that it cannot solve the problem.

Senator IVES. Yes; but that is not what I am driving at. That is not my question. I mean you are opposed to any change in any statute dealing with that matter.

Mr. GREEN. Yes; I am making that preliminary to my answer. My answer to you is the same as I made in this statement, that the settlement of jurisdictional disputes can only be brought about in a constructive way by the organizations themselves.

Senator IVES. All right, if you are going to do it by the slow process of evolution and the voluntary process, that is, completely, then presumably, if time permitted, such would be the proper course to take, but this, under present circumstances, I do not think we can do. You are right in your observation, if we have the time. But you want to bear in mind the public at large are demanding that something be done by law to solve this jurisdictional question. I think you recognize that. The clamor is everywhere.

I speak now as one friendly to the side of labor in this question, but I recognize definitely that the public are demanding that something be done.

Now, the question arises. You object to this bill. Is there any bill that you would agree to go along on whereby we could accomplish something, bearing in mind that before we get through in all probability something will be done by way of legislation in this field?

Mr. GREEN. Well, Senator, I have not gone into that. I do not know.

Senator IVES. I think that ought to be explored. This situation applies also to the secondary boycott.

Mr. GREEN. But in considering the whole question, I have taken into account the extreme difficulties that we encounter. Many times our purpose is noble. We seek to find a remedy for some serious question, and we apply the remedy that we think will work, but it will not work.

Senator IVES. Well, Mr. Green, nobody will dispute you on that, and I do not have knowledge of any controversy anyone would want to take with what you have said so far.

The only point is that we are faced with a condition that undoubtedly, before we get through here, we will be doing something along this line. Now the problem we have to face and solve is what that is to be, and that is going to require the combined efforts of every one of us. We cannot just sit here and say this will not work, or that will not work, or something else will not work.

Mr. GREEN. We have to exercise good judgment.

Senator IVES. That is right.

Mr. GREEN. And use judgment rather than be governed by feeling and emotion.

Senator IVES. That is right.

Mr. GREEN. The public at the present time are moved by feeling.

Senator IVES. But you recognize something is likely to have to be done in view of the present circumstances and the demand on the part of the people generally, do you not?

Mr. GREEN. Well, I will agree with you——

Senator IVES. You agree to that?

Mr. GREEN. That there is general public demand.

Senator IVES. And you would probably be willing to sit down with some of us or all of us and try to work out something, would you not?

Mr. GREEN. I am quite willing, as I said in the close of this, to sit down with the committee and go into the whole problem and see what can be done. You will find that in this statement.

Senator ELLENDER. Mr. Green, I do not think that there is any doubt but that this Congress is going to do something to stop jurisdictional strikes and secondary boycotts, and we want your assistance and not a negative attitude.

Mr. GREEN. All right, the thing you want to do, though, is to be careful that Congress does not make a serious mistake.

Senator ELLENDER. Congress does not want that mistake. That is why we are asking for your help.

Mr. GREEN. Those mistakes were made. They were made in days when we passed prohibition laws. You would not defend that.

Senator ELLENDER. I understand, but——

Mr. GREEN. To try to make people do this and that.

Senator ELLENDER. It is not a question of trying to make them. They are using the law on the statute books as an alibi to carry on this method that they have invoked. I would like to know how you could stop this competition existing between the CIO and the AFL in the example I cited a while ago, where management is bound under the law to employ a certain group of employees who have won the election. Now, those happen to be CIO workers.

Then, on the other hand, this manufacturer cannot have his signs or goods placed by an AFL union because they bear the CIO label.

Since there is such rivalry as now exists between the AFL and the CIO, how can you correct a condition like that?

Mr. GREEN. Senator, I will be frank with you. I want to say that conditions such as you referred to will continue just as long as the two organizations function.

Senator ELLENDER. Not if we enact a law saying that it cannot be done, and deny to them the act itself.

Mr. GREEN. You and I may disagree on the question of law, but that will continue, because it results from a rivalry between two unions.

Senator ELLENDER. You do not think such tactics ought to be prohibited?

Mr. GREEN. That is a fact. You probably noticed a couple of weeks ago where I addressed a letter to the other side.

Senator ELLENDER. I saw that.

Mr. GREEN. We notified them, we appointed a committee, and "come and meet with us around the table and let us see if we cannot eliminate all of this."

Senator AIKEN. Mr. Green, is your objection to any legislation which attempts to control secondary boycotts and jurisdictional disputes based on your belief that legislation would not affect the results?

Mr. GREEN. My position is this: that it would be a mistake to pass legislation that will not solve the problem, that will aggravate an already bad situation. Now, that is sensible; is it not?

Senator AIKEN. If your contention is correct, yes; it is sensible.

Mr. GREEN. That is what I am talking about.

Senator IVES. If I may intrude once more—the point is that the chances are we are going to pass some legislation. Now our job is to get the legislation which looks to be the most reasonable and offers the greatest possibility of accomplishing its purpose. That is what we have to come to agreement on.

Mr. GREEN. We will have to use good judgment, Senator, in order to——

Senator IVES. Well, we will use the best we have. That is all that we can do.

Mr. GREEN. Please remember that this same labor-union group that you are finding fault with are the same group that served so well during the war and helped us win the war.

The CHAIRMAN. Certainly, no one wants to destroy that group or anything of the sort.

Senator IVES. Nobody is more——

Mr. GREEN. And, at the present time, there are no workers in the world that are making a better record.

Senator IVES. Mr. Green, I do not think there is anybody in this room that will stand by labor, when labor is right, or any way, longer than I will personally. But, I recognize that right here is something that is a real problem that has got to be met. We are going to have to meet it by legislation.

Mr. GREEN. Well, Senator, I am afraid your emphasis is on exceptions.

Senator IVES. I am emphasizing conditions.

Mr. GREEN. The general purpose and policy of labor is not in accord with what you have said here. It is exceptions. Well, we have that in all lines; do we not?

Senator IVES. Nobody——

Mr. GREEN. We have laws that say a man will be executed if he commits murder, but murder is committed.

Senator IVES. That is quite correct, sir, but we still have laws against murder.

Mr. GREEN. Yes; but it does not prevent it.

Senator IVES. That is right. But, we still can do something to see what can be done.

The CHAIRMAN. If there are no more questions, you may proceed—on the bottom of page 5, I think, "Registration and financial accounting."

Mr. GREEN. If section 205 embodies the principle that labor organizations are subject to licensing by the Government, and thus exist only at the sufferance of the Government, it must be opposed. If it is mere registration, then there is no objection in principle. Moreover, on the practical side, it is to be noted that the required report concerning internal affairs of labor unions, and in particular concerning the State of their finances, is to be made available not only to union members but to the general public. Now, that is on the question of registration and upon the submission of financial reports.

Since, through public filing, a union's financial position is made known to the employer, that employer's willingness to bargain and his good faith in making counterproposals may very well be conditional by his estimate of the union's ability to weather, either a lock-out or a strike. It is certain that public disclosures, which mean disclosures to the employer, will result in a crippling of the bargaining process.

In concluding my remarks in respect to S. 55, I must state with all the vigor at my command that the various proposals contained therein, far from solving our industrial problems, can only have the effect of very seriously weakening the entire industrial structure. The compulsory 60-day cooling-off period applicable to all industries regardless of circumstances, the prohibitions against boycotting, the revival of the doctrine of conspiracy and return to the era of government by injunction, and finally the prohibitions against economic action by minority groups, all and each of them constitute a retrogression and return to the employer excesses and domination of the past.

It is difficult to understand how anyone who professes to believe that a strong and healthy trade union movement is indispensable not only to the welfare of American workers but to the health of the national economy, can consistently support the measures contained in this bill.

Now, we have gone over the most of them, Senator, through this question period, I think.

The CHAIRMAN. Are there any questions on this section?

Senator AIKEN. Mr. Green, you would agree that if the unions are required to make public their financial status in detail, that trade organizations should also be required to do the same, would you not, such as the National Association of Manufacturers, the American Railroad Association, and other trade groups whose interests at times run counter to the interests of the labor unions?

Mr. GREEN. We think that, of course.

Senator AIKEN. Would you not like to know how some of the trade organizations are financed and how their money is spent? If the public is entitled to know all the details of the unions' finances, should it not also have the same right to know the details of financing the collection and spending of funds of trade organizations as well?

Mr. GREEN. Well, I presume that under the existing statutes they are required to do that, are they not?

Senator AIKEN. Well, I would like to know.

Mr. GREEN. Do they not file it with the Revenue Department?

Senator AIKEN. I would like to know how they are financed and how the money is spent. I do not know how I can find out. I think it would take an investigation by Congress, by a committee with subpoena powers, to find that out. And, I think we ought to do it.

Mr. GREEN. I was under the impression that they were required now to file reports with the Government. I know that our local unions are required to file financial statements with the Internal Revenue Bureau.

Senator AIKEN. That is right, but that is not made public, as so proposed it should be.

Mr. GREEN. Is it not available for the Members of Congress to study?

Senator AIKEN. Not without an Executive order or vote of Congress.

The CHAIRMAN. All right, Mr. Green, you may proceed.

Mr. GREEN. Senate bill 105, "Outlawing the union shop": Senator Ball's bill, S. 105, seeks to outlaw completely any and all types of closed shop, union shop, or other union security agreements. The bill seeks to impose a compulsory open shop on American industry and American labor, and this even though the majority or, for that matter, 100 per cent of the employees involved had selected a union and desired to work under union shop conditions and the employer was willing to grant such conditions.

This proposal, outlawing the union security principle throughout American industry, is not only bitterly reactionary, but flouts over 100 years of traditional industrial practice and returns organized labor to the same status it occupied at the very beginning of its struggles for recognition. It portrays a profound ignorance of economics and economic philosophy and a deep misunderstanding of the purposes and functions of the union security principles.

As long ago as 1902 a congressional industrial commission reported the urgent and justified necessity of the union security principle, saying that "the final result" of the open shop "will be the destruction of the organization." That was made by a congressional committee, or a congressional industrial commission.

Volumes have been written concerning the moral and economic justification for the union shop or union security principle. Here only the highlights can be touched upon.

There is probably no right other than the right to strike which organized labor deems more consecrated or more indispensable to its continued maintenance and well-being than the right to seek and obtain union security agreements through the process of collective bargaining. The labor movement believes, and with historical and practical justification, that the all-union shop constitutes an effective, indeed an indispensable, means of achieving—

1. Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity;
2. Equality of bargaining power, with consequent betterment of working conditions by insuring labor unity in the contest for a fair share of the joint products of capital and labor;

3. Protection of working standards by preventing cutthroat wage competition by nonunion employees;

4. Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such benefits as members of the union rather than as "free riders," and

5. The preservation and maintenance of organization once organization has been achieved so as to free union energies for constructive rather than defensive uses.

It is desirable not only from an equitable point of view that all be required to participate in the expenses and costs of obtaining and maintaining working conditions, but also from a democratic point of view as a means of assuring all employees a voice in collective bargaining negotiations by giving them a standing in the union that represents them.

Furthermore, and this is very important, a union is able to maintain all of its obligations under its contracts only if all employees covered by the contract are members of the union. The union acts only through its members and their elected officers and cannot be expected to police an agreement thoroughly if only some of the employees are members of the union and thus subject to its rules, laws, and discipline.

That the union shop principle has become a characteristic and established part of the American industrial system is seen from recent BLS figures which show that approximately 75 percent of all workers in all industries covered by agreements are presently embraced under one form or another of union-security provision. In view of the important place the union-shop principle occupies in the philosophy and tradition of the trade-union movement, and in view of the institution it has become in American industry, suggestions completely to outlaw the union-shop relationship through legislative action must be unalterably opposed. The vast disruption of our economy that would result from the adoption of such suggestion cannot be over-emphasized. It can be categorically stated that every no-strike clause in every agreement which also has a union-shop provision will be regarded by the contracting union as no longer effective. That is so because the no-strike clause is completely dependent upon the union-shop clause; only by exercising the disciplinary power granted by the closed-shop contract can the union hope to fulfill its commitment to prevent strikes.

Protagonists of laws to outlaw the closed shop adopt as their slogan "The right to work," and assert that the closed shop denies that right. This is nothing but propagandistic hogwash. It is not a little ironic to witness the spectacle of the same reactionary employer groups that for years sponsored and enforced such vicious practices as the blacklist now trying to obscure their selfish interests behind the smoke screen of the individual employee's right to work. It is organized labor, and not these groups, to whom the right to work is truly precious. It goes without say that trade unionism is built and dependent upon that very right. But we deny that any person is denied his right to work when his failure to obtain employment in a union shop is due only to his own voluntary act in refusing to become or remain a union member although membership is open to him under reasonable terms. As well might an attorney who refuses to join and pay dues to an integrated bar association assert that he has thereby been

deprived of the right to practice his profession. While the right to work without joining with his fellow attorneys for mutual aid and protection might be sacred to some employees, to other employees the right to work only in the company of his fellow union members is equally sacred. Interference with either by the compulsion or legislative fiat is offensive to democracy and to freedom. Moreover, for the Government to lend its support to the nonunion worker in disregard and to the injury of the union worker works a manifest and unjust discrimination. Additionally, it contravenes the majority principle, because under the Wagner Act the wishes of the majority of the employees, be they union or nonunion, govern. With equal grace, although with greater economic and moral justification, might the Government decree a compulsory closed shop, yet the most rabid pro-unionists have not proposed that.

I think I can inject here a fine argument in opposition to the closed shop, a fine statement, one that impressed me very deeply. Perhaps it is more eloquent and impressive in opposition of the closed shop than anything I could say. It was made by the author of the bill, my good friend, Senator Ball.

Here are his own words:

The bill which Chairman Vinson of the House Naval Affairs Committee introduced is somewhat more elaborate and follows a little more closely the pattern of the Railway Labor Act. It also contains one feature which I believe would cause endless trouble.

That is true.

That is a prohibition of closed-shop agreements with unions. The unions which have fought long and hard for closed-shop agreements would resent such a provision bitterly.

I can testify to that too.

I think it would increase industrial strife rather than promote harmony in labor relations.

That is a fine statement.

I want to supplement that by saying that it would create chaos, industrial strife.

The proposal constitutes an arbitrary interference with the freedom on contract guaranteed by our Federal Constitution, thereby undermining the very foundation of our free enterprise system. Surely this Congress is never going to say that an employer and his employees engaged in the production of goods for the public cannot freely enter into a contract that will guarantee steady, uninterrupted production. No, sir. That is unreasonable.

Moreover, any such complete prohibition would be grossly discriminatory as against labor organizations. Under the law labor organizations are obliged to represent, on a completely equal basis, all within the bargaining unit. Any benefits or improvements obtained through union action must be extended to all within the unit regardless of whether or not they are members of the union.

In spite of this compulsion, this bill would prevent a union from attempting to secure by voluntary agreement equal contribution by all who are benefited; it unfairly benefits the nonunion employee who parasitically seeks a free ride. This is, in our opinion, a manifest denial of the constitutional principle of equal protection of the laws.

Now, suppose you would enact such a measure into law. As I un-

derstand it, its main provision is that employers and employees must not enter into an agreement which provides for a closed shop. All right. You enter into that agreement. Our unions throughout the Nation can comply with that by keeping out of their contract any section referring to closed shop or open shop. But, how are you going to make union men work with a nonunion man?

I am a coal miner, and I worked in the coal mines for 20 years under union-shop conditions. I will swear by all that is good or holy that no man could make me work with a nonunion man against my will. His labor is his own.

And here we have union-shop agreements, closed-shop agreements, in the printing trades, the building trades, in the motion-picture industries, in numerous other lines. How are you going to break them up? They are working satisfactorily. The employers want them. They are satisfied. They have passed through the old experience of having 2 or 3 days' idleness periodically because some one or two members did not pay their dues.

It has meant stability in industry, steady production, better relationship between employers and employees. The pottery industry has not had one strike for almost a half a century, working under closed-shop agreements. Everybody happy and satisfied.

THE CHAIRMAN. Not entirely satisfied.

MR. GREEN. You must take those things into account—that you cannot make a man, a union man, work with a nonunion man against his will.

You know, it is a religion with them—at lot of them. There have been almost as many martyrs to the cause of unionism as there have been to the church itself. It has not been long since 40 union workers at Latimer, Pa., were shot down because they stood up for their union. And at Pana, Ill., in the miners' situation, hundreds of them gave up their lives in defense of the union.

It is a religious motive that moves them. You cannot eliminate that from consideration of these matters. They are devoted to their union.

I have with me a published study by Father Francis J. Toner, of St. Martin's College, one of the leading students and authorities on the subject of closed shop in the country. The study deals with the subject of the closed shop in Britain. It deals with it very definitely.

There has been a great deal of misapprehension concerning the status of the closed shop in England, and it has often been asserted that there are no closed-shop relations in England, that the closed shop is illegal in England, and that, notwithstanding this, the labor-management relationship in England is excellent.

The study shows that the exact opposite is true. Percentagewise, more than twice as many employees are under closed-shop relationships in England than are in the United States, although in England the agreements are oral rather than written. The very fact of the closed-shop relationship has given rise to much of the stability that has characterized the industrial picture in England.

The study is further useful in indicating just what might be expected if a closed-shop relationship is outlawed by a legislative act. In England this very thing was attempted many years ago, with resulting riot, blood-shed, and wholesale disregard of the law by persons who

felt it to be their inalienable right to work only with fellow employees joined together in the same organization for purposes of self-protection and advancement.

The study is an excellent one, and it would be well worth the while of this committee to give it its attention.

Now, I have a copy of it here, and I should like to offer it for insertion in the record, if you please.

The CHAIRMAN. It may be filed with the committee.

(The document referred to has been filed with the committee.)

Senator BALL. Since Mr. Green quoted me, I would like to tell him that I always reserve the right to change my mind; anyhow when facts convince me I am wrong. As a matter of fact, that speech was made in 1941 at the beginning of our war effort, when I felt that any drastic change in our labor relations structure would be disruptive. I have never approved of the closed-shop principle.

And, incidentally, your reference to religious martyrs I do not think was very apt. As I recall, most religious martyrs were martyrs because they refused to join a particular religion under compulsion. I am not so sure that the martyrs in the labor movement today are not the ones that are being compelled to join a union they do not want to join.

I was interested in your comments on S. 204. It seems to me that there you made a very strong argument for complete freedom and all the rights for the minority. Now, in this argument on the closed shop, you do not want to give the minority any rights, once the union gets the majority.

How do you reconcile those two positions?

Mr. GREEN. Senator, there is a lot of difference there. When an agreement has been entered into between a union and an employer, and that agreement provides that it shall be a union shop, and the workers employed by that employer will be members of a union, how can you or anyone else argue in favor of upsetting that agreement to allow some individual to come in and work who does not belong to the union?

Senator BALL. I was asking how you reconcile those two positions.

Mr. GREEN. It is a condition of employment.

Senator BALL. Wait a minute. On a jurisdictional strike, you contended that the minority union, even though it has lost an election, should retain its full rights to strike and do anything else it wanted to to try to become a majority. But, you say if the majority union can persuade the employer to sign a closed shop agreement, then you completely obliterate the minority and any rights it might have.

Mr. GREEN. What I am pointing out—

Senator BALL. How do you reconcile that position?

Mr. GREEN. What I am pointing out is this. I think you have the wrong point of view on that. What I am pointing out is that you cannot by legislation make union workers work with a nonunion worker.

Senator BALL. I agree with you.

Mr. GREEN. Do you agree with that?

Senator BALL. Yes.

Mr. GREEN. Then, that is the very thing involved in this bill.

Senator BALL. No. That is a very different thing from compelling individuals, in order to work in a given industry, to join a union.

Mr. GREEN. You cannot do that.

Senator BALL. If a hundred percent of the employees are in the union they are all working with union people.

Mr. GREEN. That is impossible, and you will agree with me on that.

Senator BALL. If one out of the hundred has convictions that do not permit him to join the union, as for instance, Mr. DeMille who testified here that he was thrown out or suspended from his union because he refused to pay a political assessment to fight a proposition which he favored, and he loses his employment on the radio, do you think that is a sound situation?

Mr. GREEN. I do not know anything about that, but Mr. DeMille is one among 60,000,000 people, and surely this Congress is not going to pass a law because he has a grievance.

Senator BALL. You mean that the individual does not count any more in this union picture?

Mr. GREEN. That is unreasonable. I am talking about the right to contract.

Senator BALL. In other words, then, you would say that a Communist union that gets a closed shop contract has a perfect right to force all the employees in that shop to contribute to the Communist Party? That is in effect what you are saying.

Mr. GREEN. Not on your life. Never. That is different. There is no comparison.

Senator BALL. What is the difference?

Mr. GREEN. A Communist is sworn to overthrow our Government. Between making our members belong to that, and the workers working under the closed shop who defend this Government with their life—where is there any comparison?

Senator BALL. The comparison is identical. Mr. DeMille lost his employment, was suspended from his union, because the union took a different political position than he did on a political issue. And that is exactly what would happen.

Mr. GREEN. As long as there is the right to contract, to make a contract for a closed shop and work under it, anybody that does not want to work under it does not have to. He can seek work elsewhere.

Senator BALL. You are familiar with section 7 of the Wagner Act which guarantees to employees full freedom to join any union of their choosing and empowers the Board to see to it that the employers do not interfere with that right. You are in favor of that?

Mr. GREEN. Senator, that has not operated to any disadvantage to anybody, has it?

Senator BALL. I say are you in favor of it?

Mr. GREEN. The same principle is not involved in this case.

Senator BALL. Can you not just answer? Are you not in favor of that principle in the Wagner Act? That is the basic question.

Mr. GREEN. You are trying to interpret that to mean a nonunion worker can get work at a plant where there is a contract.

Senator BALL. I will get to that in a minute.

Mr. GREEN. That is my understanding of it.

Senator BALL. Virtually every employer who has testified before this committee has said most emphatically that he believed in that principle of the Wagner Act. He did not want to see it weakened in the slightest degree. I would like to see just one union leader come

in here and take the parallel position and say that in his opinion the individual workers should be free to join or not to join any union as they individually want.

Mr. GREEN. Well, they can do——

Senator BALL. Would you take that position?

Mr. GREEN. Nobody is going to interfere with the exercise of that right. He can belong to a union or he can stay out of a union. Nobody is going to interfere with that. But, when he comes to a plant where a contract is in effect between the union and the employer, who will defend the man and say, "You set that contract aside for me"?

Senator JENNER. Then, I take it, Mr. Green, that you would have no objection to placing the closed shop under the democratic process to determine whether or not the men themselves actually wanted a closed shop.

Mr. GREEN. No; because they decided in the first place.

Senator JENNER. That is right. Then, I take it under Senate bill 527 that you would agree that it would be proper to have the question of the closed shop decided in the same way you have your collective-bargaining agent decided, by an orderly democratic process of letting the men by secret ballot determine whether or not they wanted a closed shop. Is that right?

Mr. GREEN. Well, I do not know what Senate bill you mean. What was the number you said?

Senator JENNER. Senate 527.

Mr. GREEN. I do not know what its provisions are, and I would not make any commitment on it until I knew what it was.

Senator JENNER. You state here:

* * * also from a democratic point of view as a means of assuring all employees a voice in collective-bargaining negotiations by giving them a standing in the union that represents them.

Now, Senate bill 527 does this: It says that if the men want a closed shop, to bargain for a closed shop, they so notify the National Labor Relations Board. The National Labor Relations Board conducts an election on the right to bargain for the closed shop in the same way as they conduct the election to determine who the collective bargaining agent will be under section 9 of the Wagner Act.

Now, then, these men, by secret ballot, vote, and if two-thirds of them say they want a closed shop, the right to bargain for a closed shop, then their union goes to management and bargains for a closed shop. In other words, it is sort of a middle ground between the outlawing of the closed shop. It does not outlaw it at all. It makes the closed shop legal, a legal entity, and sets up a democratic, orderly process so that the men themselves will have the right to say whether or not they want a closed shop.

Mr. GREEN. Well, our objection to that is this, and it is very decisive.

Senator JENNER. You object to that too?

Mr. GREEN. Yes; because we want what everybody else in this country wants—less of Government interference in the affairs of the workmen of the Nation and in the collective-bargaining relationship between employers and employees.

Senator JENNER. Mr. Green——

Mr. GREEN. Wait a minute. We had enough of that during the war. Under that you would have to have some Government agency—

the Labor Relations Board or somebody—and we do not want to extend the authority of these Government agencies to interfere in the relationship. We want to be free—free to bargain.

Senator JENNER. The Government has no interference. The only thing the Government—

Mr. GREEN. Who is going to determine that?

Senator JENNER. The men themselves by their secret ballot. The only thing the Government does is set up the machinery for holding a fair, impartial election.

Mr. GREEN. Who will supervise the election?

Senator JENNER. Well, who supervises it now?

Mr. GREEN. The men themselves. You want the Government in.

Senator JENNER. No; the men do not supervise the election.

Mr. GREEN. We do not want any Government in. We want less of it.

Senator JENNER. Under the Wagner Act, to determine who the collective bargaining agent will be, the Government holds the election, and that is all.

Mr. GREEN. During the wartime we were willing to yield to the Government all interference, a whole lot, and we set our strike weapon behind the door all during the war. But, when we get away from that and we are back to normal conditions, we want to be freemen, and we do not want the Government in.

Senator JENNER. Well, the Government, as I say, is not interfering. You are simply using the existing governmental machinery to conduct elections and to let the men themselves decide, say, by secret ballot—

Mr. GREEN. That is all right.

Senator JENNER. Whether or not they want their union to bargain for a closed shop.

Mr. GREEN. They can do that without the law, and without any Government agency.

The CHAIRMAN. Mr. Green, I notice you talk about the union shop. This whole subject concerns outlawing the union shop. Do you object to the closed shop or do you distinguish between the union shop and the closed shop? The actual abuses testified to here have related perhaps more to the so-called hiring halls and closed shop, and one witness, at least, Mr. Teller, who seemed to be an impartial labor relations man, proposed that we prohibit the closed shop, but not the union shop—in other words, that the employer have the right to employ anybody he chooses, and that he have 30 days or some other period in which he must join the union, which I understand is the more usual practice today.

Mr. GREEN. I think that is the more usual. Well, among some industries, that practice is followed, but others require the presentation of their union membership at the beginning.

The CHAIRMAN. You would object to any attempt to limit either?

Mr. GREEN. Well, I would not object to having a talk about that, Senator and consider and present all relevant facts.

The CHAIRMAN. In other words, your objection to prohibiting the closed shop in its technical term is not quite as strenuous as to the union shop?

Mr. GREEN. I think it is distinction without a difference. It is very difficult to understand.

The CHAIRMAN. The other question that bothers me is that if we do have the closed shop, if we say, "All right, the closed shop is legal," are we not under some obligation to see that the rules of the union are reasonable, that the dues are reasonable? Are we not under some obligation? Does it not force us into some of this Government regulation of unions which you protest against?

Mr. GREEN. Well, these unions are democratically controlled.

The CHAIRMAN. Are they democratically controlled? The charge is made that there are unions which are not; that when a man is once elected he is elected for life, like Mr. Petrillo or whoever it may be; and that if we are going to permit that union to have a closed shop—of course, if it does not have a closed shop that is their affair—but if it has a closed shop that we are, therefore, obligated to step in and see that democratic elections are held.

Do you think that there is anything in that argument?

Mr. GREEN. Senator, there might be something in some cases, but, generally speaking, our unions are very democratically controlled, and if these charges are made—and, of course, I know men have been coming here making loose charges, moved by feeling and emotion—if you make an investigation, you will find that the charges are not well-founded.

The CHAIRMAN. There are, however, apparently some practices, as in the question of dues for political purposes, as in the DeMille case, or others which perhaps might be limited or regulated by Government action in a union which insists upon a closed shop. That is the suggestion made here.

Mr. GREEN. I might say to you, Senator, that so far as the American Federation of Labor is concerned, we will not countenance or tolerate an automatic assessment placed upon workers for political purposes.

Senator BALL. It was an AFL union.

Mr. GREEN. That has been our position all the way through. We will not permit it.

The CHAIRMAN. Mr. Green, that raises a question that interests me. Do these AFL international unions not have such complete autonomous power that there is nothing you can do to make them conform to your standards?

Mr. GREEN. They have very complete autonomous power, but our national unions conform to the general regulation and rule and constitutional requirement of the American Federation of Labor. I do not know of a single national union that ever favored the imposition of an assessment for political purposes for the purpose of helping a political party.

Senator BALL. Is not the——

Mr. GREEN. That is in accordance with our nonpartisan political policy.

Senator BALL. Is not the American Federation of Radio Artists an AFL union?

Mr. GREEN. There may be some voluntary contribution by locals or individuals to help some friend, regardless of his political affiliations.

The CHAIRMAN. Senator Ball.

Senator BALL. Is not the American Federation of Radio Artists an AFL union?

Mr. GREEN. What?

Senator BALL. Is not the American Federation of Radio Artists an AFL union?

Mr. GREEN. Radio Artists?

Senator BALL. Yes. The American Federation of Radio Artists.

Mr. GREEN. I think it is an AFL union.

Senator BALL. That is the union that suspended Mr. DeMille.

Mr. GREEN. That is the one Mr. DeMille complained about, is it not?

Senator BALL. That is right.

Mr. GREEN. He got a lot of publicity over it. I am not familiar with it.

Senator BALL. Mr. Green, I would like to ask you a couple of questions about these five reasons you gave why the closed shop is so essential to the union.

The first one was that of the job security angle—in other words, that the employer will sabotage the union by firing union employees if you do not have the union security clauses. Does that not almost require the premise that you think the guaranties in the Wagner Act are ineffective, that the law does not protect the individual's right to join or not to join a union?

Mr. GREEN. Well, we do not depend on law fully and wholly for protection. The employee who joins the union feels that that union is going to protect him in his job, and that it will guarantee him job security.

Senator BALL. Do you think the Wagner Act is effective in protecting union employees against discrimination by the employer?

Mr. GREEN. Well, discrimination? I think the Wagner Act does provide protection to a large extent against discrimination, but the union can give them better protection than the Wagner law.

Senator BALL. I see.

Your third reason was protection of working standards by preventing cut-throat wage competition by nonunion employees. I cannot quite figure that one out, because under the exclusive bargaining rights conferred by the Wagner Act it is the union that negotiates the minimum standard for all employees. How can nonunion employees work for less than the minimum without violating the contract?

Mr. GREEN. Well, they do some very queer things, Senator. If the gate is thrown wide open to him to employ nonunion workers at will, and he is guaranteed that right by statute, he can secure benefit from that by having these nonunion workers make concessions, work at lower rates even than the union workers have.

Senator BALL. How can he, if he is working under a contract, without violating his contract and immediately getting into trouble? I cannot see it.

Mr. GREEN. You will be surprised if you go out and find out how contracts are violated.

Senator BALL. I know there are disputes over the application, but I cannot imagine an employer signing a contract covering all his employees in the unit under the exclusive bargaining right, and then trying to hire people at less.

Mr. GREEN. But, with only a percentage part of the workers working in a plant, they are not able to enforce contract provisions as well as if they are thoroughly organized.

Senator BALL. Well, I grant you that the stronger union is in the strongest position in enforcing the contract, but I think if a union

has a majority no employer in his senses is going to go out and try to hire nonunion men and pay them less than the contract rate. That would close his shop quickly.

Mr. GREEN. Many of those employers who want to have the open shop as you propose want it for personal advantage, and it gives them an opportunity to get advantages through the employees who are non-union workers.

Senator BALL. I notice you also use the free-rider argument. It seems to me you take the position that since the union is given exclusive bargaining rights for all employees in the unit by law, that therefore it, like Government, should have the power to tax all employees to pay the expenses of the union. Is that substantially your position?

Mr. GREEN. Well, what I meant by that is that all employees of an employer where a union contract is in effect pay their dues. Now, the unions have to employ experts many times. They have to employ research men. They have to deal with job-evaluation problems and employ people to look after their interests. Now they have to spend money for that purpose.

Senator BALL. Do you think they should have the power through a closed-shop contract or a union shop to compel all employees to help pay that cost?

Mr. GREEN. Only by paying their dues into a union. Not more than the other, but the same as each other. Then, each contributes toward the cost of employing experts that I have just referred to, in order to assemble data and economic facts so that they can present it in argument with the employers for higher wages.

Senator BALL. Let me go into that a little further. Do you think there are a substantial percentage of American workers who are working in a plant where a union has negotiated a contract, and they benefit from the contract, and the union has done an excellent job for the employees, who are such chisellers that they would object to paying the dollar or two a month dues to the union in return for those benefits?

Mr. GREEN. Well, a nonunion worker will not pay any dues. Experience has shown that. That is the reason.

Senator BALL. But you are implying he is doing it because he is a chiseler, that he does not want to pay for benefits actually received. Do you really think there are very many American workers in these periods when wages are pretty high that are unwilling to pay union dues if they really think that the union is doing a job for them?

Mr. GREEN. I do not think he is influenced by that so much as he is by the fact that he does not like a union, like a lot of other people. They do not like the union or do not want anything to do with it. They do not want to belong. We say to them, "If you do not, you can go some place else. We are not going to punish you or anything like that."

Senator BALL. "You just cannot work in that industry if it is completely organized under the closed shop?"

Mr. GREEN. There are other places where he can find work. Would you mind my asking you a question?

Senator BALL. No.

Mr. GREEN. What caused you to change your mind as set forth in that speech?

Senator BALL. I did not change my mind. I never regarded the closed shop as anything but illiberal. I did question at one time whether you could get rid of the closed shop without creating too much industrial disturbance. My conviction is today that where unions are doing a good job for their members they do not need compulsion to get workers to join. They will join of their own free will. Where they are not doing a good job and union members are members only because of compulsion, I think they ought to get out of the union.

Mr. GREEN. You will find in all walks of life that there are some who do not measure up to the standards we have set or required. But you said in your statement that the passage of the Vinson law outlawing the closed shop as proposed in your bill would create industrial chaos.

Senator BALL. I think it would have created a great deal of difficulty. I am not so sure now we should not have undertaken that, because during the war the Government by order, by ordering maintenance of membership clauses in contracts through the War Labor Board, compelled hundreds of thousands of Americans to join unions whether they wanted to or not. I do not think that was sound government policy. I did not know that was coming up at the time, and it seemed to me that the beginning of a tremendous war effort was not the time to make that kind of drastic change in labor policy.

Mr. GREEN. But you surely would not support legislation that would produce industrial chaos, would you?

Senator BALL. No; of course not.

The CHAIRMAN. All right, Mr. Green, go ahead. We would like to finish. You would probably like to finish this morning, so we will let you alone for a while.

Mr. GREEN. All right, sir, I am enjoying it.

By this proposal Senator Ball not only seeks extensive revisions in the procedures and administration of the National Labor Relations Act but also would abandon completely the philosophy upon which that act is premised and the purposes which it presently achieves.

This is S. 360, "Amendments to the Wagner Act."

Now, sections 3 and 4 radically alter the administrative set-up and procedures of the National Labor Relations Board. Section 3 withdraws all prosecuting and investigating functions from the Board and transfers them to the Department of Justice in a new Labor Division. Section 4 provides for changes in the manner in which contested cases are to be handled by the Board preparatory to decision. We oppose the adoption of these changes because they are unnecessary, because they will undoubtedly serve to delay decisions, and because they will greatly decrease the possibilities of consent settlements.

There can be no question but that these changes would constitute a revolutionary departure from the basic concepts of the administrative process as adopted and practiced in this country, and we see no reason whatever why the National Labor Relations Board should be singled out for experimentation in this respect. As you know, the American Federation of Labor has, in the past, vigorously criticized and condemned some of the methods and practices of the National Labor Relations Board. However, our criticisms were essentially premised on a biased administration of the act by biased personnel.

That condition has since been largely eliminated by the appointment of new Board members who, in our opinion, are now acting in an equitable and fair manner. But even during the worst period we never suggested or supported suggestions for such an extreme revamping of the act. Moreover, and this is extremely important, the basic defects in administrative procedure have been remedied by the recently passed Administrative Procedure Act, which received the endorsement of the American Federation of Labor, and which, of course, applies to the Board as it does to all other administrative agencies.

Unfair practices: Section 5 of S. 360 amends section 8 of the present act in several respects. First, it makes it an unfair practice for a labor organization or its agents to interfere with, restrain, or coerce employees in the exercise of their rights in respect to organization, designation of representatives, and the like.

The reasons why this type of provision was omitted from the original act, and the reasons why subsequently advanced amendments to the same effect were not adopted, remain equally cogent today. Insofar as this provision may be addressed to unlawful acts, like assaults and batteries, they are completely subject to regulation and control by the State authorities, and under our Federal system of Government that is precisely where they belong. The National Labor Relations Act is not, and should not, be a police measure, and the National Labor Relations Board is not, and should not, be a police court.

Insofar as this provision is addressed to interference, restraint, or coercion accomplished by the exercise of lawful economic pressure, it is indefensible in the extreme. The business of labor organizations is to organize working people, and it is not the business of employers to interfere with such organization. Just as employers engaged in business for profit have every right to employ lawful economic pressures in their relationships, so do labor organizations have every right to employ lawful economic pressures in their organizing activities. To deprive labor unions of that right, as the bill does, is, in effect, to put labor unions out of business.

Section 5 renders the obligation to bargain collectively much weaker than it is today by providing that the obligation to bargain does not "require the making of a counterproposal." Why not? Why should not there be counterproposals in the process of collective bargaining? How else can negotiations be honestly carried on? How else can peaceful settlement be hoped for? Collective bargaining, under this new definition, becomes a farcical phrase whereby, unions having made reasonable demands, the employer need only listen attentively, in profound and respectful silence, making no reply whatever. For those employers who under the present act have so far evaded its mandate by cleverly converting collective bargaining into an endless talkfest, the task will become much easier. Under this bill they can force the union spokesman to interminable and boring monologues.

We agree with the general objectives of the proposed revision of section 9 (b) dealing with the appropriate unit, but we believe that some changes should be made. As to the craft unit, the proposed language provides that the Board may not declare the craft unit inappropriate on the grounds that a different unit has been established by a prior Board determination.

That does not go far enough. We suggest the need of explicit language making mandatory the establishment of craft units in all cases

unless a majority of the craftsmen involved desire otherwise. We recommend that the language of the New York act in respect to craft units be adopted.

Senator BALL. May I ask you a question there, Mr. Green? You talked about collective bargaining. I assume the AFL is opposed to compulsory arbitration.

Mr. GREEN. The which?

Senator BALL. To compulsory arbitration.

Mr. GREEN. Decidedly so.

Senator BALL. Well, what struck me about the present Board's interpretation of the obligation to bargain collectively is that it requires the making of a counterproposal. Now, conceivably, that amounts to, under the present law, unilateral compulsory arbitration. You can make enough counterproposals until you get up to where you have compulsory arbitration.

Now, if you impose the obligation to bargain on the unions as well as on employers, and you still require the making of counterproposals, it seems to me—that is, permit the Board to require the making of counterproposals—you are in exactly the same position. You have, in effect, provided for compulsory arbitration instead of free collective bargaining.

I agree that making of counterproposals is a natural part of collective bargaining, but I think when you require it by law and give a Board the authority to hold either an employer or a union guilty of an unfair labor practice because they do not make a counterproposal, you are heading right straight toward compulsory arbitration.

For instance, an employer might say, "I demand the union agree to a 20-percent wage cut," and a counterproposal, I suppose, would be that "we will accept a 5-percent wage cut." You would not want to be in that position.

Mr. GREEN. Senator, collective bargaining means that the two groups engaged in collective bargaining will propose to each other. That is the right interpretation to put upon collective bargaining, and that is what we had in mind when we say that there should be no objection to either side making a counterproposal.

Senator BALL. There is no objection. We just do not require it; that is all.

Mr. GREEN. I am thinking, of course, about genuine collective bargaining.

Senator BALL. So am I.

Mr. GREEN. When it is carried on honestly and sincerely and frankly, with no shadow-boxing, no restraint, but each one frankly and openly engaged in collective bargaining. You make a proposal and I will say I cannot accept it, that it is unreasonable. Well, then, what would you do? Well, you would probably withdraw and have a conference with your people and come back and make a new proposal. On the other side the same way.

The CHAIRMAN. Your requirement of a counterproposal, or the removal of that requirement, does not remove the requirement to make a proposal. Both sides, as I take it, under this bill, must make proposals.

Mr. GREEN. Must make proposals.

The CHAIRMAN. But, I take it what it is meant is that if the demand there should be for a 10-percent increase, the employer

in order to be said to bargain collectively does not have to come back and say, "I will give you 1 cent." He may come back and say, "I will not give you any increase under present conditions." That is not a counterproposal, but it has been held in some cases to be no collective bargaining because you refuse to give them 1 cent. I agree it is a difficult thing to do, but that is the intention. But the intention only is to say that collective bargaining does not mean that every settlement must be a compromise by both sides, because that I do not think should be so.

Mr. GREEN. Well, I may misunderstand it. I do not know what it means, but I am dealing with the abstract method of collective bargaining, and free, honest, open collective bargaining, because I participated in it and I know.

The CHAIRMAN. Mr. Green, I want to ask one thing. What lawful economic pressures do you mean? What are lawful economic pressures against a man who will not join a union? What are the lawful economic pressures you think should be permitted and are necessary to the existence of a union? What do you mean by lawful economic pressures?

Mr. GREEN. Well, Senator, I think that—where is that?

The CHAIRMAN. Unfair practices. About the middle of the page, at the end of the third paragraph under "Unfair Practices." You say, "to deprive labor unions of the right to use lawful economic pressures in their organizing activities." What do you mean by that? You cannot deprive them of the right of persuasion, but is not persuasion to join a union all that you ought to have?

Mr. GREEN. That is a broad term. That would deal with this boycott, and first and secondary boycotts to which you refer.

I want to give you an illustration. An employer working under a contract with a union will pay a rate of wages up here, and he will then complain to the union, as they do sometimes, that an employer over in some other section, producing the same kind of commodities, is paying a less rate, and "I cannot compete with him in the market."

Now, either the wage scale there must be raised up to the wage scale that I pay, or my wage scale must come down to the wage scale that he pays.

Now, then, the thought is that the union shall have the right to exercise such lawful economic pressure as it can in order to prevent that.

The CHAIRMAN. You are thinking again of the secondary boycott or the boycott theory?

Mr. GREEN. Yes; that is right.

The CHAIRMAN. All right.

Senator IVES. Mr. Green, I take it from your observations here in connection with the proposal of amendment to section 9 (b), that you are not averse to the idea of the amendment to the Wagner Act itself. I do not believe you are.

Mr. GREEN. As I suggested, we favor the inclusion in the Wagner Act of unit clause of the New York law.

Senator IVES. Well, that is what I gathered. Well, now, there are one or two matters that you are eloquently silent about in your observations as to the amendments to the Wagner Act, matters which have rather forcefully been brought to our attention at one time or another. One of these is the right of employees and employers to talk

together. You have no objection to anything like that being put in the act along the lines incorporated now in the New York State law?

Mr. GREEN. We have always favored that.

Senator IVES. I think that would be a very salutary thing to have in it; do you not?

Mr. GREEN. We favor free speech on the part of the employer the same as we do on the part of labor, so long as there are not threats and coercion.

Senator IVES. And another thing that there has been considerable agitation on: That is this matter of legally—I suppose now it can be done, but there is no evidence of it in the present act—allowing employers to request elections for the matter of certification, collective-bargaining purposes. You have no objection to having anything like that incorporated in the act, have you?

Mr. GREEN. Well, that we would have to give consideration to.

Senator IVES. That has been in the New York State law and there has been no trouble.

Mr. GREEN. Well, I am not sure about it, but what I referred to in the New York State law was that section which confers on the workers, not on a Government board, the right to determine what they want.

Senator IVES. Let me get this clear between you and me, at least. That is, you have no objection to any amendment to the Wagner Act which does not in any way curtail labor's right. Is that right?

Mr. GREEN. That is right.

Now, the right to strike: The provisions of section 10 of S. 360 and their underlying philosophy should be condemned by every citizen in this country to whom the essence of Americanism is meaningful. That may, at first blush, sound like an extreme partisan statement, but I am convinced that when you carefully think upon and carefully analyze those provisions you will agree with me that seldom if ever has there been any proposal for legislation that is so profoundly subversive of the concepts and attributes of freedom of action and self-reliance which have made this country great.

What we have here is paternalistic statism of the most obvious and dangerous kind. It is provided that a strike to compel an employer to bargain with any organization or person not certified as the representative of his employees under section 9 is an unlawful strike. This goes even beyond the intolerable restriction in S. 55 against strikes by minority unions. This prohibits a strike for wages on the part of a majority union unless that union has first received the formal nod of Government approval in the form of a certificate issued by some Government agency.

No matter how unquestioned the majority status of that union, no matter that everyone, including the employer, knows and acknowledges that all of the employees involved are members of a union and desire to be represented by it, no matter how long a satisfactory bargaining relationship has been in existence, it would still be necessary under this provision for that union to request the Government to issue a formal governmental document certifying the existence of a fact that no one has ever doubted, before it may lawfully strike in furtherance of the most reasonable demand.

Nor is that all. Section 10 also provides that no union, even one that has already been certified by the Government, may strike to com-

pel an employer to remedy practices for which an administrative remedy is available under this act.

Consider what this means. An employer may deliberately pursue an offensive course of action in willful violation of this very law with the express design of smashing the union and depriving his employees of their elemental rights, and the union must patiently and politely sit back and do nothing in self-defense except invoke what is at best the cumbersome machinery of Government for aid and support.

I pass over the obvious fact that in most, if not all, cases such an employer would have fully and irreparably accomplished his destructive aims long before the Board and the reviewing courts could take any final, remedial action. My essential point is that it will be a sorry day for this country if and when it adopts and enforces a philosophy that individuals or groups, be they workers, employers, farmers, or anything else, may not meet their problems by resorting to their own lawful and peaceful devices, but rather, are compelled to become dependent supplicants to an all-wise, all-providing, all-embracing government.

In final irony, section 10 provides "except as specifically provided in this section, nothing in this act shall be construed to diminish the right of employees to strike or engage in other lawful concerted activities." It is as though some thief having robbed his victim of every available possession would sanctimoniously soothe him by saying, "You may thoroughly enjoy what I have left you." There would be nothing left.

I cannot conceive that this committee or this Congress will give any serious attention to obnoxious proposals of this kind.

Now, S. 133, industry-wide bargaining: S. 133 seeks to destroy all attempts by a single union representing employees in any particular trade or industry to eliminate, through the collective-bargaining process, nonunion wage competition throughout geographic areas, be they regional or nation, if the areas extend beyond 100 miles. In addition, it seeks to prevent such attempts to protect and maintain wage standards by agreement between two labor organizations in the same industry even though this agreement be on a strictly local basis and within the above-mentioned hundred-mile area.

Thus, the necessary protection cannot be obtained either by a single agreement embracing all employees who might engage in wage competition, or by agreement between union members, as by provisions contained in union constitutions or bylaws that no member or affiliate shall agree to or accept compensation below a stated minimum.

A more retrogressive proposal could hardly be imagined. It treats the labor of human beings as though it were a commodity. Over 30 years ago the Congress declared that, "The labor of a human being is not a commodity or article of commerce." That, of course, is just as true today. The bill seeks by legislative fiat to stem the whole evolution of the trade-union movement. It indicates a profound ignorance of the basic philosophy under which that movement has grown and progressed in all nations where it has remained free, namely, the philosophy that the economic interests of all engaged in a trade or industry is interdependent, and the working conditions of each affect the conditions of all, so that organization, to be effective, must extend over as wide an area as possible.

In this country, the most significant achievement of industry-wide bargaining has been in the garment industry where, beginning among conditions so disgraceful as to give rise to the very term "sweatshop," there has evolved an industry-wide relationship, through industry-wide bargaining, which can serve as an example for the world. In addition, Nation-wide agreements in the stove industry, in the soil pipe industry, in the railroad industry, in the pottery industry and others, area agreements in the shipping and shipbuilding industry, in the trucking industry, and in many others have contributed immeasurably to industrial stability.

That it is not only natural but inevitable for trade unions to seek to extend organization and the benefits of bargaining over as wide an area as possible has been recognized time and time again, not only by leading economists but by the Supreme Court of the United States.

As far back as 1919, Chief Justice Taft—the chairman's distinguished father—speaking for all but one of the then Justices, stated in respect to combinations of workers for their mutual aid and protection as follows—a wonderful statement:

To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because, in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership, and especially among those whose labor at lower wages will injure their whole guild.

That was rendered in the *American Steel Foundries v. Tri-City Council* case.

The CHAIRMAN. It seems to be rather in accord with the Ball bill though, does it not? He wanted to combine all the people in one industry in one neighborhood or all the people in all the shops of one company. He does not express his opinion on the Nation-wide proposition.

Mr. GREEN. Well, it was a wonderful decision. I will say that for you.

Since then ease of transportation and integration of industries have made the labor market far more regional and national in scope. It has become the prime function of any national organization to seek to maintain protections and to extend benefits through entire areas or through entire industries. Such expansion through a national labor organization arose, as did the very principle of self-organization, out of the necessities of the situation, for unless nonunion wage competition was eliminated, organization and bargaining in particular plants or in particular local areas could be made entirely ineffective. This was recognized by the Supreme Court, speaking through Justice Stone—another wonderful statement—in the *Apex Hosiery Co.* case, when it stated:

Since in order to render a labor combination effective it must eliminate the competition from nonunion made goods * * * an elimination of price competition based on differences in labor standards is the objective of any national labor organization.

There is the kernel of it all, and that is what our labor movement is trying to do.

That was the *Apex Hosiery Company v. Leader, et al.* case.

The necessity for maintaining comparable conditions throughout an entire region was again recognized by the Supreme Court in the Thornhill case where it eloquently and accurately stated:

The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern.

And finally, in the Swing case, the entire Court agreed that:

The interdependence of economic interest of all engaged in the same industry has become a commonplace.

That was in the *American Federation of Labor v. Swing* case.

Are these plain economic facts to be ignored? Are the basic interests of workers to be disregarded and the evolutionary trend of trade unionism to be diverted?

Industry-wide wage stabilization would come to an end, living standards throughout the country would be depressed, collective bargaining would have no real meaning because it would be ineffective, and the slogan of "equal pay for equal work" would become an empty one because impossible of realization. Industrial chaos and a depression in living standards can be the only result of the passage of S. 133.

Now just let me depart from that a moment to tell you something. The necessity of dealing with unions on a national basis was demonstrated clearly during the war on several occasions. I recall—

The CHAIRMAN (interposing). Will you excuse me, Mr. Green? I have to go to a luncheon uptown at which I agreed to make a few remarks. Senator Ball will preside.

Mr. GREEN. Thank you very much for my opportunity to meet with you.

The CHAIRMAN. It was a great pleasure.

Mr. GREEN. During the war we met with some most extraordinary and unusual experiences. The Government found during the war that it could not rely upon its own employment service to provide them with skilled workers in order to erect buildings and barracks and industries so essential to the winning of the war.

They had to resort to the unions on a national basis. They came to our unions to supply them with men.

I recall at Corpus Christi, when they were seeking to build a tremendously big flying-field building in the beginning of the war. They needed hundreds of thousands of skilled building trade workmen. They tried to get them through their employment service, but they failed. They called us in to a conference. We met with them. They asked us, and we told them that we would supply them with the men.

Immediately we called upon our skilled workers to respond to the call of the Government and go to Corpus Christi and do the job. They traveled from New York, and they traveled from Boston. They traveled from Philadelphia, and they traveled from Cleveland. From everywhere. And, in just a reasonably short time, a full complement of men was supplied, and the building was completed in less than record time.

How could you do that except on a national basis?

The other was when the atomic bomb was being produced. It was a hurry-up job. It was a tremendous hurry-up job at Pasco, Wash., and in Tennessee.

Secretary of War Patterson called myself and my associates into conference with him; told us of his problem. He said, "We are engaged in a secret production process. I cannot tell you what it is, but we must have men, an ample supply of men at these plants."

Well, we got busy immediately, and they needed skilled workers, highly skilled workers, and particularly electrical workers. Immediately we called upon our workers, as we did for Corpus Christi, and all sections of the country, and they journeyed to Pasco, Wash., and to this town in Tennessee, and in a very short time the buildings were erected and the bomb was being produced.

The workers of America, traveling from remote sections in this country, manufactured the bomb quickly enough to land it on the Japanese city. It was more than the soldiers that did that job. If you do not believe what I am telling you, call Secretary Patterson to come over and meet with you, and he will tell you the truth.

Now that was on a national basis. What would you have done without it? Delay, delay, and perhaps lost our chance of speedily winning the war.

It occurred to me that I ought to tell you of that experience because it fits in with this proposal now to go back to the horse-and-buggy days and have us deal with an employer in Timbuktu, and another employer doing the same kind of work in another city and another town.

I cannot, for the life of me, understand how anyone could conceive of such an idea.

Senator BALL. Mr. Green, you are aware of course that the industry-wide shut-downs last year in rail transportation and in coal production, both of which had the effect of throwing many millions of workers not directly affected, not directly involved, out of work and gradually stalling the whole economy, led the President to propose his emergency bill last year which would have given him the power to draft workers into the Army and compel them to work.

Now, I do not know whether S. 133 is the perfect solution to that, but it seems to me that kind of monopolistic power in the hands of any private organization, whether it is the union or the employer group or anything, to shut down the total production of a vital commodity in this country, is one you simply cannot tolerate.

There is this proposal to decentralize the power. Over in the House there is a proposal, I understand, for compulsory arbitration in these types of disputes.

I take it you would reject both of those. What kind of solution do you propose? What can we do? Congress cannot leave the country and the economy at the mercy of those industry-wide shut-downs. What are we going to do?

Mr. GREEN. There again, Senator, you are basing the enactment of legislation upon an incident that took place, not upon the rule. Now here are the railroad organizations. The employees of the railroads, the thousands of them that have not had a strike on the railroads within our memory, and because there was one interference we are going to pass a law.

Now, in the coal industry, I think myself the Government was largely to blame. There would not have been any stoppage of work in that industry if the representatives of the Government had gone and sat around a table and talked with the representatives of the miners. But, they would not do it. They took an arbitrary position that a contract is in effect, and "we are not going to even talk to you about it." That was not a fair position to assume.

Senator BALL. We are not trying to assess the blame for these stoppages. What is the Government going to do in the face of those stoppages? I think if Government is to remain Government in this country it cannot tolerate an industry-wide shut-down which is going to stall in a few weeks the economy on dead center and throw millions upon millions of people out of work. Government will have to arbitrarily seize the facilities or force people to work or do something of the kind of proposals we had last year, if we do not provide some orderly sound solution in law to that situation.

Now, it is all right to oppose my bill. I do not contend it is perfect. I studied the thing a lot before I came up to that, but I would like to know what you propose to do about it.

Mr. GREEN. I will tell you, in my opinion. The representatives of labor organizations are reasonable men. They will fight, of course, for higher standards of living and improved conditions of employment. But, it is my opinion that when they become convinced that a strike is injuring the public welfare and the health of the Nation, that they themselves will agree to some plan by which the strike can be temporarily set aside and negotiation for settlement carried on.

Senator BALL. Do you really take that position in view of the two or three major coal strikes that we had during the war, when the whole war effort was dependent on coal production?

Mr. GREEN. Well, there was not——

Senator BALL (interposing). Would you leave the country at the mercy of the benevolence and patriotism of the leaders who control these monopoly unions?

Mr. GREEN. As I recall, in that speech you made, and I quote it again, you said, in the concluding paragraph, that we will have disputes but there will be a way found to settle the disputes.

You expressed your opinion on that, and I think your opinion was sound, and that is just the way we will do with these cases. We will find a way to settle them so that the people of the country will not suffer.

Now the coal dispute was submitted to the Supreme Court. The Supreme Court has the matter under consideration now and will make a decision. That decision will be handed down, and will perhaps establish a very, very important precedent. I do not see any need——

Senator IVES. Mr. Green, I do not like to interrupt you all the time. I have been doing it more or less this morning. But, I would like to get your viewpoint on one thing because I think I know what it is. You do not approve of that kind of strike, do you?

Mr. GREEN. Which?

Senator IVES. Any industry-wide strike which paralyzes the economy.

Mr. GREEN. Well, Senator——

Senator IVES. You do not approve of that kind of strike?

Mr. GREEN. Now, listen; there is involved in that again the question of the individual's right to strike. How are you going to pass a law to—

Senator IVES. I am not talking about a law. I am talking about what you personally approve or disapprove. You do not approve of that kind of strike, do you?

Mr. GREEN. We have always taken this position. I think this will be an answer to your question. We have always taken the position that unions in public utilities, where the health and public welfare is involved that they should refrain from engaging in strikes.

Senator IVES. Not only that, but you are doing all you can, are you not, to discourage all that kind of striking?

Mr. GREEN. What is that?

Senator IVES. You are doing all you can to discourage that kind of strike, are you not?

Mr. GREEN. Yes. And, I have here an exhibit I want to file showing the quotations from contracts entered into by a large number of organizations whose members are employed in public utilities giving arbitration and no-strike sections. When they cannot agree, it shall go to arbitration.

Now, I am going to file that in the record for you.

Senator BALL. Your position is, Mr. Green, that this threat of industry-wide shut-down, that virtually affects the whole national economy, is not serious enough to warrant any kind of legislation by Congress?

Mr. GREEN. We are not talking about industry-wide shut-downs. We are talking about prohibition against negotiating industry-wide contracts.

Senator BALL. Oh, that is a quibble. I mean the threat of industry-wide shut-downs grows directly out of the power to bargain on an industry-wide basis. If they did not have that, they could not shut down a whole industry, obviously.

Senator ELLENDER. May I ask how long we will sit before lunch? I would like to know.

Mr. GREEN. I am about done. I have just another section. This is the conclusion.

The large number of proposals now before this committee are ill-considered in the extreme. I say with full conviction and full sincerity that their enactment would produce such great industrial confusion as to seriously undermine the present world position of the United States. They are premised on an assumption that is entirely without merit, namely, that our problems in labor-management relations stem from alleged excesses in the practices of trade unions.

The truth is, of course, that most, if not all, of those problems result from basic new forces that have developed under the changed circumstances of the past 15 years—such as our expanded economy and our great advancement in machine production with resulting manpower displacement; the dislocations and adjustments caused by the depression; the war and the postwar period; and the emergence of certain economic and social truths.

It necessarily follows that the indispensable first step that we must take, if we can hope to cope with those problems in an intelligent and

effective manner, is to acquire a complete knowledge and understanding of those basic forces and of those new circumstances. The American Federation of Labor is prepared to cooperate with this or any other competent committee in making such a study.

Now I want to file these exhibits for inclusion in the record, if I may.

Senator BALL. They will be received without objection.

Mr. GREEN. They deal with the problem of strikes in public utilities and of our policy of avoiding strikes in public utilities, and so forth. There are also other exhibits here that I would like to have included.

Senator BALL. They will be received.

(The three exhibits submitted by Mr. Green are as follows:)

AMERICAN FEDERATION OF LABOR

EXHIBIT No. 1

VOLUNTARY ARBITRATION OF LABOR DISPUTES

(Presented by William Green, President, American Federation of Labor)

Compulsion will not promote industrial peace

Industrial peace will not be secured by the establishment of labor courts or by compulsory arbitration. Maintenance of enduring industrial peace rests upon the full acceptance of free collective bargaining.

Compulsion can force the parties to submit to a procedure. It may temporarily force an unwilling acceptance of the results. But forced obedience generates resistance. It is therefore a source of further conflict. Obedience, exacted by compulsion, can never be a substitute for agreement.

Compulsory arbitration will destroy existing voluntary machinery

Proposed legislation will not start industrial relations from scratch. If enacted, it will cut across the very sinews of living relationships grown of mutual agreement and accord. It will replace by force the rules of equity and fairness men have built up through the years by common consent. At one stroke it will wipe out the many charters of industrial peace arrived at through industrial democracy. It will break down self-discipline born of self-government, snuff out the spirit of constructive contribution born of cooperation.

While the interests of labor and management on specific issues may often be divergent, these differences are overshadowed by a common interest in greater and more efficient production which alone can yield better profits and better wages and at the same time contribute to a higher standard of living of the whole community. Labor and management are not natural adversaries. The very essence of their collective-bargaining relationship is agreement. Voluntary arbitration is the outgrowth of the necessity to maintain agreement. For voluntary arbitration is based on agreement; it derives its force and effectiveness from the agreement of the parties and from no other source.

Compulsory arbitration, on the other hand, places labor and management in the position of perennial contestants. It encourages each side to argue against the other, for it is the best argument that must win. Its procedure is litigation. It resolves that litigation, not in accordance with standards set by law, but through arbitrary decision of the umpire. Compulsory arbitration backs that decision with force, not agreement.

In short, every step of compulsory arbitration is in the direction opposite to voluntary arbitration. The two procedures are fundamentally opposed to each other. Introduction of compulsory arbitration will therefore promptly and completely destroy the voluntary arbitration machinery through which peaceful, friendly, and cooperative relations have been built up by labor and management over a period of years.

Voluntary arbitration is widely prevalent in industry and trade

Most collective-bargaining agreements provide for final determination of specified issues in dispute, unresolved by all other procedures established by the agreement, through voluntary arbitration. The prevailing procedure in collective bargaining is to have the grievance machinery terminate in arbitration. In a num-

ber of industries, such as printing, voluntary arbitration of wages and other basic issues subject to negotiation has long been the final means of establishing an agreement. Some A. F. of L. unions, as in public utilities, maintain a requirement in their union constitutions that voluntary arbitration be the last resort in the settlement of unresolved differences.

According to a Government survey made in 1944, "three out of four union agreements in 14 important industries, covering about 83 percent of the workers under the agreement analyzed, provide for arbitration as the terminal point in the grievance machinery."¹

This study of 1,254 union agreements in 14 industries shows that of the total, 915 agreements provided for arbitration. Of the total number of workers covered by agreements containing this provision, 28 percent were subject to permanently established arbitration machinery. The remaining 72 percent were subject to procedures calling for the selection of arbitrators whenever the need arose (ad hoc arbitration).

Of all arbitration agreements, 93 percent (covering 91 percent of workers) provided for automatic arbitration, or arbitration at the request of either party. Under this procedure, arbitration must be carried out if either party requests it and both parties agree in advance to accept the decision as final and binding.

About 4 percent of arbitration agreements, covering 6 percent of workers, are limited to permissive arbitration. In other words, they permit arbitration only when in each specific case both parties mutually agree to arbitrate a dispute.

According to a study of 212 collective-bargaining contracts made by Abraham A. Desser and published in 1946, 80 percent of agreements analyzed had voluntary arbitration as the final stage for settlement of disputes. Of the 212 contracts studied, 172 contained such a provision. Of the remaining contracts, 23 called for ultimate resort to mediation or conciliation but without arbitration.²

Another study, published in December 1945 covering 100 representative agreements, shows:³

"Of 100 representative agreements subjected to detailed analysis, 92 provide that unsettled disputes under the agreement be submitted to final and binding arbitration at the request of either party or, in a few instances, at the request of the aggrieved party; three provide that arbitration shall be used only if both parties so agree at the time of the dispute; and five make no reference to arbitration."

Prevalence of arbitration provisions in 100 agreements

	Mann- facturing	Nonmann- facturing	Total
Arbitration automatically invoked upon request.....	67	25	92
Arbitration by mutual consent.....	3	0	3
Arbitration not provided.....	5	0	5
Total.....	75	25	100

Scope of voluntary arbitration

According to the Bureau of Labor Statistics study of 1,254 agreements, the precise scope of arbitration provided by collective bargaining varies from agreement to agreement, ranging from general statements providing for final arbitration of disputed issues to a detailed, itemized list of specific issues which are arbitrable. The study points out that the majority of the agreements analyzed not only authorize the arbitration of disputes involving the interpretation of contract provisions, but also enumerate issues which are subject to arbitration. Many agreements restrict arbitration to interpretation and enforcement of the terms of the agreement. Sometimes such agreements specify that the arbitrator has no power to "add to or subtract from or modify" any terms of the current agreement. For the most part, such provisions are proper safeguards against the possibility that the arbitrator might "arbitrate away" the rights of management or of labor which are not properly subject to arbitration.

¹ Arbitration Provisions in Union Agreements, Bureau of Labor Statistics, U. S. Department of Labor, Bulletin No. 780, 1944, p. 1.

² Trends in Collective Bargaining and Union Contracts, by Abraham A. Desser. Studies in Personnel Policy, No. 71, National Industrial Conference Board, Inc., 1946, p. 11.

³ Bureau of National Affairs, December 17, 1945.

Some agreements provide that any dispute over wages, hours, or other conditions of employment may be arbitrated, authorizing the arbitrator to interpret contract clauses relating to wages. About three-fourths of the agreements analyzed make individual wage disputes, including wage rates and wage classifications, subject to arbitration. Other agreements refer to both general and individual wage disputes during the term of the agreement, or to disputes over general wage revisions only.

Voluntary arbitration in public utilities

Informal conferences of labor and management representatives in public utilities were recently convened by the United States Conciliation Service at the suggestion of the Labor-Management Advisory Committee. Union and management representatives of light and power, gas, and transit utilities, widely representative of each industry, have made it emphatically clear that voluntary arbitration is the established procedure for the final settlement of disputes in almost all cases where collective bargaining relations are maintained. To inject compulsory arbitration into the pattern of voluntary relations established in these public utilities would wreck the existing voluntary machinery and inevitably promote disputes, strife, and unrest.

Local transit.—Streetcar and motor coach transit in most of our sizable communities is covered by collective-bargaining agreements maintained with the local transit systems by the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, affiliated with the American Federation of Labor. All of the affiliates of the amalgamated must provide for voluntary arbitration. The requirement for voluntary arbitration is provided in the amalgamated association's national constitution. (See extract from constitution and general laws of the amalgamated association attached to this exhibit.) Specific contract provisions of local divisions of the amalgamated association implement this requirement and set up the procedure followed in arbitration of unresolved disputes. Such arbitration requirements are in effect in local transit, including street railways and motor busses, and also apply to a number of suburban as well as intercity bus lines. (Sample provisions of contracts appended to this exhibit.)

Light and power.—Collective bargaining relations with the majority of light and power utilities throughout the nation are maintained by the International Brotherhood of Electrical Workers, A. F. of L. Practically all of the agreements between the brotherhood and utility companies provide for voluntary arbitration as the final step in settling matters in dispute. Experience of the past 28 years has proved this to be an effective means for the settlement of differences and a thorough safeguard against work stoppages and interruption of service.

In addition to voluntary arbitration, IBEW contracts with public utilities contain no-strike clauses. Under the terms of the no-strike clause, the union recognizes that the services performed by the employees "pertain to and are essential to the operations of a public utility and to the welfare of the public dependent thereon." In recognition of this, the union agrees "that under no conditions and in no event whatsoever will the employees covered by this agreement, be called upon or permitted to cease or abstain from the continuous performance of the duties pertaining to their positions with the company." The clause provides further, that in the event any employee should cease work in violation of the agreement, the union agrees "to provide the company with qualified and sufficient employees to enable the company to continue operation of its properties without interruption or other injurious effects." In the event the union fails to provide such employees, the company is free to "secure and use services of others than those covered by the agreement."

The no-strike clause and the voluntary arbitration procedure are directly related. It is plain that imposition of compulsory arbitration would promptly invalidate the union's voluntary no-strike agreement and the legal and moral commitment the union has assumed to stand by as a guardian of uninterrupted service to the public.

A congressional enactment imposing compulsory arbitration would reduce to shambles the long-established structure of harmonious labor-management relations in the vital public utility field and bring to an abrupt end the 28-year no-strike record of the union, unmarred by a single work stoppage.

(Arbitration and no-strike clauses from five typical agreements maintained in the public utility field are appended to this exhibit. According to President Tracy of the International Brotherhood of Electrical Workers, "provisions very similar or identical to those contained in these agreements are contained in practically all of the agreements that the Brotherhood has entered into with utility companies.")

Pottery and chinaware

An industry-wide agreement between the National Brotherhood of Operative Potters and the United States Potters Association, covering the five branches of the industry into which its products are grouped, provides for a union-management standing committee empowered to adjust matters that cannot be settled between the firm concerned and its employees. The agreement further provides that "all work in dispute shall be continued, pending and subject to the decision of the standing committee." The decisions of the standing committee, on which management and labor are equally represented, are final and binding. These decisions are made by a majority vote and in case of a tie a seventh, impartial, member is added to the committee.

Since 1900, when the agreement first went into effect, the voluntary arbitration and no-strike provisions have been maintained with full effect. There have been no work stoppages in the industry throughout that time.

(A full text of the relevant provisions of the contract between the National Brotherhood of Operative Potters and the United States Potters Association is appended to this exhibit.)

Printing and publishing industry

Most workers in the various branches of the printing and publishing industry are organized in printing trades unions affiliated with the A. F. of L.

The great majority of the collective bargaining agreements maintained by the printing trades unions provide for joint standing committees to which grievances are referred and which decide other matters which remain unsettled after negotiations between the company and the chapel or local union. These standing committees are usually composed of two representatives of the company and two of the union. If the dispute involves more than one member of an employers' association, the employer representatives on the committee are selected by the association.

The standing committee renders a decision by a majority vote on all matters referred to it. If the committee is unable to agree, the matter is ordinarily referred to arbitration by the addition of a fifth impartial member. The impartial member is selected by agreement of employer and union representatives and acts as chairman. All decisions of the arbitration committee are final and binding.

The procedure for voluntary arbitration in the printing trades is long-established and time-honored. It generally applies to all disputes arising under existing agreements. However, in more than half of the cases, the International Printing Pressmen and Assistants' Union has also provided for the arbitration of disputes arising over the terms of new agreements.

It is a general rule of printing trades that strikes and lockouts are forbidden until all means of settling the dispute, including arbitration, have been exhausted.

An International Board of Arbitration has been jointly established by the International Printing Pressmen and Assistants' Union of North America and the American Newspaper Publishers' Association. This Board acts as an arbitration board of last resort under a number of pressmen's contracts in the newspaper publishing branch of the industry.

(Arbitration clause in the agreement between the International Printing Pressmen and Assistants' Union of N. A. and the American Newspaper Publishers' Association is appended to this exhibit.)

Elevator manufacturing industry

A National Arbitration Committee has been established for a number of years by joint agreement of the International Union of Elevator Constructors, A. F. of L., and the National Elevator Manufacturing Industry, Inc., covering elevator manufacturing, installation, and maintenance. The industry-wide agreement provides that the National Arbitration Committee "shall have power to enforce its decision by right of mutual consent for the protection of the public and the entire Elevator Industry; and it is further understood that pending their decision there shall be no stoppage of work." The Board is a bipartisan body and its decisions are final and binding upon each party to the agreement. The elevator industry has been notably strike-free due to the effective operation of this no-strike agreement.

(Arbitration clause of the agreement between the International Union of Elevator Constructors, Operators, and Starters, A. F. of L., and the National Elevator Manufacturing Industry, Inc., is appended to this exhibit.)

The foregoing are but a few notable examples of the effectiveness of voluntary arbitration procedures, established by agreement with A. F. of L. unions, in maintaining industrial peace. These voluntary arbitration agreements form the basis of long-established peaceful relations between labor and management in many vital segments of America's industrial life. These peaceful relations will be disrupted or destroyed by legislative imposition of compulsory arbitration.

SAMPLE CLAUSES

Exhibit No. 1-A

VOLUNTARY ARBITRATION

Public Utilities: Local Transit Industry

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY & MOTOR COACH EMPLOYEES OF AMERICA

CONSTITUTION AND GENERAL LAWS

Strikes and lock-outs

SEC. 121. When any difficulty arises between the members of and Local Division of this Association and their employers, regarding wages, hours of labor, or any other question that may result in a strike or lock-out, the dispute shall first be taken up by the executive board of the Local Division or by a committee appointed by the Local Division for that purpose, and they shall make a thorough investigation and seek, through conferences with the company, to get the matter satisfactorily adjusted. The committee, after having finished the work of negotiation with the company, shall submit a full report to a meeting of the Local Division.

SEC. 122. If by compliance with Section 121 the committee has been unable to secure a settlement of the matters in dispute satisfactorily to the Local Division, and the Local Division believes that the matters in dispute are of such importance that a strike should be ordered, the question of a strike shall be submitted to a secret ballot vote of the entire membership of the Local Division. If necessary to reach the entire membership of the Local Division the ballot shall be taken by referendum, ballots being prepared and so distributed to give every member an opportunity to vote. If two-thirds of the membership voting upon the question decide in favor of suspending work, the Local Division shall at once notify the International President. The International President, upon receipt of such notice, shall proceed to the scene of dispute in person or by deputy, and in conjunction with the committee of the Local Division, shall make a thorough investigation and attempt to settle the matter in dispute. *In case of failure thus to secure a settlement he shall then, in conjunction with the Local committee, prepare propositions of arbitration defining the points in dispute and the basis upon which they shall be arbitrated. If the company refuses to accept arbitration as tendered, the International President or his deputy shall then communicate with the membership of the General Executive Board in writing or by telegram and obtain the consent of a majority of the General Executive Board before endorsing the strike.*

VOLUNTARY ARBITRATION

Public Utilities: Local Transit Industry

ARBITRATION CLAUSE OF THE CONTRACT BETWEEN DIVISION 689, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, A. F. OF L., AND THE CAPITAL TRANSIT COMPANY, 1946

SEC. a. It is hereby agreed that properly accredited officers of the Company shall meet and treat with properly accredited committees or officers of the Association, who may be employees of the Company, or general officers of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, on all questions and grievances that may arise during the life of this agreement, and should there be any questions or grievances that cannot be

amicably adjusted by said conferences, the same shall be submitted to a Board of Arbitration composed of three persons, one to be chosen by the Company, one to be chosen by the Association, and the two thus selected to select a third disinterested arbitrator who shall be representative of the public; the findings of a majority of said Board of Arbitration to be final and binding on the parties hereto. Each of the parties hereto shall name its arbitrator within five (5) days after having received written notice from the other party hereto, and if either party fails to name its arbitrator it shall forfeit its case. If, after a period of ten (10) days from the date of the appointment of the two arbitrators representing the Association and the Company, the third arbitrator has not been selected, the officers of the Company and the officers of the Association shall meet with the two arbitrators selected and agree upon the third arbitrator, or make such arrangements concerning the arbitration as will definitely assure the selection of the third arbitrator. All the conditions in this contract shall remain undisturbed during the arbitration proceedings. Each of the parties hereto shall bear the expense of its own arbitrator and the parties hereto shall jointly bear the expense of the third arbitrator.

VOLUNTARY ARBITRATION

Public Utilities: Motor Bus Transportation

SAMPLE ARBITRATION CLAUSE IN CONTRACT OF DIVISION No. 998 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA

This agreement entered into this 20th day of June A. D. 1940, by and between Racine Motor Coach Lines, Inc., a corporation organized and existing under the laws of the State of Wisconsin, its successors or assigns, party of the first part, hereinafter called company, and Division No. 998 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, party of the second part, hereinafter called the association.

* * * * *

4. *Arbitration.*—It is agreed that the association and the company should mutually settle any questions arising out of the terms of this agreement, or any renewal thereof, without resorting to arbitration, but where differences seriously affect either party, it is agreed that as a last resort such differences shall be submitted to arbitration.

Either party desiring to arbitrate any matter must notify the other in writing, and within 1 week thereafter each party must submit to the other in writing the name of its member of the arbitration board. These arbitrators shall endeavor to come to an agreement on the issues to be arbitrated, but failing to do so within 1 week after their appointment, they shall select a third arbitrator. When the third arbitrator is chosen, the arbitration board shall organize and promulgate such rules as are proper for conducting the arbitration. Arbitrators shall meet every day that it is practical for them to do so.

During arbitration proceedings there shall be no strike or lock-out. The findings of the arbitration board shall be in writing and the majority decision shall be binding upon both parties to this agreement.

In case the arbitrator chosen by either party resigns, withdraws, or dies, his place shall be filled by the party who had previously chosen him and the arbitration shall proceed without interruption or change other than in personnel above referred to, which change shall be made within 1 week. Each party shall bear the expense of its own arbitrator and all expenses incurred in connection with the preparation and presentation of its own case. Any other joint expenses incurred in conducting the arbitration shall be jointly shared. (Racine Motor Coach Lines, Inc., and Division No. 998 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L.)

VOLUNTARY ARBITRATION

Public Utilities: Street Railways

SAMPLE ARBITRATION CLAUSE INCORPORATED IN CONTRACTS OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES, A. F. OF L.

Arbitration After 30 Days' Negotiations.—This agreement shall become effective on the first day of June, 1943, and shall remain in effect until the first day of June 1944, and thereafter until changed on thirty (30) days' notice, which may be served in writing by either party on the other on or after the first of May 1944; in case one party serves notice on the other, the parties shall negotiate for thirty (30) days. In case the parties cannot reach an agreement at the end of thirty (30) days (unless this period is extended by mutual consent), all questions in dispute shall be submitted to a Board of Arbitration, whose decisions shall be final and binding on both parties.

(Agreement with Market Street Railway, San Francisco.)

VOLUNTARY ARBITRATION

Motor Transport

SAMPLE ARBITRATION CLAUSE INCORPORATED IN CONTRACTS OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES, A. F. OF L.

The Company agrees to meet and treat with the duly accredited officers and committees of the Union upon all questions relating to hours, wages and working conditions, and should any difference arise between them which cannot be mutually adjusted, the same shall be submitted at the request of either party to a board of arbitration to be selected forthwith.

(Agreement with the Dixie Greyhound Lines, Inc., and the Northland Greyhound Lines, Inc.)

Exhibit No. 1-B

CALIFORNIA-OREGON POWER COMPANY—LOCAL UNION No. 659

Agreement was originally entered into July 1, 1937.

Current agreement entered into July 1, 1946.

Expires on June 30, 1948.

Grievance and Arbitration Provisions:

Any difference that may arise between the Company and the Local Union which the representatives of the Company and the Local Union, as hereinafter provided, are unable to settle, shall be referred to the representatives of the Company and the Local Union, who shall each select a committee of three (3) to represent each of the parties hereto. This committee of six shall be known as the Joint Arbitration Board to which all unsettled matters shall be referred to this Board for adjustment.

In the event the six so selected cannot agree on any matters referred to them, a wholly disinterested person shall be chosen by them as the seventh member of the Arbitration Board.

In the event the Arbitration Board is unable to agree on the selection of the seventh member of the Board within ten days after the date they decide they cannot agree on all matters before them, either party may refer the matters in dispute to the President of the Company and the President of the International Brotherhood of Electrical Workers for adjustment. No lawyer or legal adviser to either of the parties hereto, shall be eligible to act as a member of the Arbitration Board.

Each party shall bear the expense of preparing and presenting its own case and expense of the seventh arbitrator and incidental expense mutually agreed to in advance shall be borne equally by the parties hereto.

No-strike clause

It is expressly understood and agreed that the services to be performed by the employees covered by this Agreement pertain to and are essential to the opera-

tions of a public utility and to the welfare of the public dependent thereon, and in consideration thereof, and of the agreements and conditions herein by the Company to be kept and performed, the International Brotherhood of Electrical Workers and the Local Union agree that under no conditions and in no event whatsoever will the employees covered by this agreement, or any of them, be called upon or permitted to cease or abstain from the continuous performance of the duties pertaining to the positions held by them under the Company, and the Company agrees on its part to do nothing to prevent such performance and continuity of said employees, insofar as such performance is required in the normal and usual operation of the Company's property, and that any difference that may arise between the above mentioned parties shall be settled in the manner herein provided.

Should a contingency arise where an employee and/or employees covered by this agreement cease work in violation of this Agreement of his or their own volition, the International Brotherhood of Electrical Workers and/or the Local Union hereby agree to provide the Company with qualified and sufficient employees to enable the Company to continue operation of its properties without interruption or other injurious effect, and in the event of failure of said International Brotherhood of Electrical Workers and/or the Local Union to do so, the Company may secure and use services of others than those covered by this agreement.

ILLINOIS POWER COMPANY—LOCAL UNIONS B-309, B-702

Agreement was originally entered into June 5, 1935.

Agreement was originally entered into with Southern Illinois Group of the Illinois Power Company August 15, 1928.

Current agreement entered into July 1, 1946.

Expires on June 30, 1947.

Grievance and arbitration provision

The party desiring arbitration shall give notice to the other and shall, on or before the fifth day following, designate three representatives and advise the other party of such designation. The other party shall, on or before the fifth day following receipt of such notice, designate three representatives and advise the first party of such designation. The six representatives so appointed shall meet promptly and endeavor to decide the matter or matters submitted, and in case of failure to reach a decision within five days (Sunday and Holidays excluded), the six shall select a seventh member. The Arbitration Board so constituted shall hear the evidence and decide the matter or matters without avoidable delay. It is agreed that a majority decision rendered by such Board shall be final and binding on both parties. Each party shall bear the expense of its own arbitrators, and the expense of the seventh arbitrator shall be borne equally by both parties.

No-strike clause

The parties agree that the public utility operations of Utility, upon which the employees covered in this Agreement are to be engaged, are essential to the public welfare, and recognize their obligations to furnish continuous public utility service. Accordingly, the parties agree not to perform any act which will result in the interruption of public-utility service to the public.

SUPERIOR WATER, LIGHT AND POWER COMPANY OF SUPERIOR, WISCONSIN— LOCAL UNION B-276

Agreement originally entered into July 16, 1937.

Current agreement entered into January 10, 1947.

Expires May 31, 1948.

Grievance and arbitration procedure

Any complaint, grievance, or dispute that may arise with respect to the operation or performance of this agreement between the Company and the Union or its members shall be taken up for settlement in the simplest and most direct manner. Unless by mutual consent another procedure is adopted the matter shall be handled in accordance with the provisions of this Article.

Any complaint, grievance, or dispute as referred to in Section 1 above shall be handled in accordance with the following:

First.—Between the employee or employees concerned, together with the Union Steward if so desired, and the foreman or immediate supervisor of the aggrieved employee.

Second.—Should any matter not be adjusted as provided in the First Step above within forty-eight hours it shall be reduced to writing and referred to the Business Manager of the Union and the President or General Manager of the Company or his authorized representatives.

Third.—Should the parties not reach a mutually satisfactory settlement of the matter or controversy as provided in the Second Step above within five days either party may demand arbitration by giving written notice to the other. Such arbitration shall be in accordance with the provisions stated hereinafter.

Within three days after written notice is given by either party requesting arbitration, as provided in Section 2 above, the matter shall be referred to a Board of Arbitration of two members designated by the Company and two members designated by the Union, and a fifth member to be selected by these four members. In the event the members of the Board or Arbitration fail to select the fifth member within three days, the parties shall jointly request the Director of the Conciliation Service of the United States Department of Labor to appoint the fifth member; both parties to be bound by such appointment.

The Board shall proceed to hear evidence on the matter in dispute. The rules of evidence prevailing in courts of law or equity shall not be controlling. Within fifteen days after full submission of any matter the Board shall render its decision. The majority decision of the Board of Arbitration shall be final and binding on both parties hereto.

Each party shall defray the expenses of its own members of the Board of Arbitration, together with any expenses in presenting its own case. The fee and expenses of the fifth member of the Board shall be borne equally by the parties, together with any incidental or general expenses in connection with the arbitration mutually agreed upon in advance.

It is further understood and agreed that no lawyer or legal adviser to either party shall be eligible to serve as a member of the Board of Arbitration.

No-strike clause

It is expressly understood and agreed that the services to be performed by the employees covered by this agreement pertain to and are essential to the operation of a public utility and the welfare of the public dependent thereon and in consideration thereof, and of the agreements and conditions herein by the Company to be kept and performed, the Union agrees that the employees covered by this agreement will not be called upon or permitted to cease or abstain from the continuous performance of the duties pertaining to the positions held by them with the Company, in accord with the terms of this agreement; and the Company agrees on its part to do nothing to provoke interruption of or prevent such continuity of performance of said employees, insofar as such performance is required in the normal and usual operation of the Company's properties, and that any difference which may arise between the parties hereto shall be settled in the manner hereinafter provided.

Should a contingency arise where an employee and/or employees covered by this agreement ceases work of his or their own volition, the Union hereby agrees to provide the Company with proper and adequate services in accordance with this agreement, to enable the Company to continue operation of its properties without interruptions or other injurious effect, and in the event of failure of the Union to do so, the Company may, so long as such failure shall continue, secure and use services of other than those covered by this agreement.

COMMONWEALTH EDISON COMPANY—LOCAL UNION 1361

Agreement was originally entered into January 1, 1944.

Current agreement entered into October 1, 1945.

Expires on July 31, 1946.

Grievance and arbitration provisions

The Union Grievance Committee shall consist of seven Union representatives designated by the Union. The Union will furnish the Company, in writing, the names of the Union representatives so designated.

Should any dispute or difference arise between the Company and the Union or its members as to the interpretation or application of any of the provisions of this Agreement or with respect to job working conditions, the term working conditions being limited to those elements concerned with the hours when an employee is at work and the acts required of him during such hours, the dispute or difference shall be settled through the grievance procedure, provided that no grievance will be considered which is more than four weeks old. A dispute as to whether a particular disagreement is a proper subject for the grievance procedure shall itself be treated as a grievance. The steps in the grievance procedure are:

Step 1.—The dispute or difference shall be presented and first discussed by the employee concerned and his immediate superior. The employee may be accompanied by his Steward if the employee so requests.

Step 2.—If the dispute or difference cannot be adjusted as provided in Step 1, it will be reduced to writing and then discussed by the Steward and the Head of the Section of the Division in which the employee works, or if there are no Sections in the Division, with the Head of the Division. The Head of the Section or Division shall give his answer within seven days.

Step 3.—If the dispute or difference is not satisfactorily settled in Step 2, it will then be discussed by the Union Grievance Committee and the Head of the Division. (Department Head in the case of the Purchasing and Stores Department.) The Division Head may be accompanied by additional Management Representatives up to the number of Union Representatives. The Head of the Division shall give his answer within seven days.

Step 4.—If the dispute or difference is not satisfactorily settled in Step 3 it shall be referred to a committee composed as follows:

Representatives of the union: The Union Grievance Committee who may be accompanied by a Representative of the Brotherhood.

Representatives of the company: The Vice President in Charge, Manager of Industrial Relations, Additional Company Representatives up to the number of Union Representatives as stated above.

The Company may appoint alternates for its representatives.

The Vice President in Charge shall give the Company's answer within seven days.

Step 5.—If the dispute or difference is not satisfactorily settled in Step 4 it shall be referred to the President of the Company. The President of the Company (or an alternate) and another representative of the Company shall, within ten days, arrange to meet and discuss the matter in dispute with a designated representative of the Union who shall be an employee covered by this Agreement. The Company shall give its answer within ten days after the date of this discussion.

Step 6.—If the dispute or difference is not satisfactorily settled in Step 5, it shall be referred at the request of either party to an Arbitration Board consisting of not more than two representatives of the Company and not more than two representatives of the Union. Should these be unable to agree on any matter before them within seven days, they shall select a disinterested odd member to act with them and then render a majority decision thereon.

All decisions rendered by the Arbitration Board shall be final and binding on both parties. In case the members of the Arbitration Board are unable to agree on the selection of the odd member of the Board within ten days from the date the representatives of either party determine the matter cannot be settled in any other way, then the American Arbitration Association shall select the odd Arbitrator.

The time specified for each step in the grievance procedure may be extended by mutual agreement.

It is agreed that where provision is made in this Article for a Steward to represent the Union at Steps 1 and 2 in the grievance procedure, in the event of his absence or inability to serve, the President of the Local Union may appoint any other Steward of the Union as his alternate. The Company shall be notified of such appointments.

At each step above Step 1 in the grievance procedure the answer given by the Company shall be in writing. In case the Union is not satisfied with the Company's reply it shall present a written request for further consideration to the Company representative specified at the next higher step. The time allowed at each step will begin with the date of receipt of this request. If the Union does not carry the grievance to the next higher step within fifteen calendar days after

the Company has rendered its decision at any step the grievance shall be considered settled and not subject to further discussion.

The Arbitration Board shall be governed wholly by the terms of this Agreement and shall have no power to add to or to change its terms.

Each party in an arbitration proceeding may be represented in such proceeding by any person authorized in writing by such party. Such representatives may examine all witnesses in the proceedings.

Each of the parties in the arbitration proceedings shall bear the fees and expenses of its own Arbitrators and the fees and expenses of the odd Arbitrator shall be borne equally by both parties provided, however, that the total compensation of such odd Arbitrator shall be agreed upon in advance after submission of the matter in controversy to the five arbitrators.

In case of a grievance relative to disciplinary suspension or demotion, or discharge for cause, such grievance shall be originated at Step 3 in the grievance procedure. If the charges are not sustained in the procedure outlined in this Article the employee's record shall be cleared of such charges and in case of loss of any wages he shall be reimbursed for such loss.

In the event of a dispute or difference, the parties hereto shall continue to transact and carry on their business in the same manner as at the time of the raising of the question or questions in dispute until a settlement is reached through the grievance and arbitration procedure provided in this Article.

Pay at their regular monthly rate of pay will be allowed officially designated Stewards and members of the Union Grievance Committee, or their alternates as provided for in this Article, for the basic work days of their basic work week while engaged in Steps 1, 2, 3, and 4 of the grievance procedure.

No-strike clause

The Company agrees that during the period of this Agreement there shall be no lock-out of members of the Union. The Union, its membership, individually and collectively, and the Brotherhood, agree there shall be no strike, or other interruption of work, it being the desire of all parties to provide an uninterrupted service to the public.

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CENTRAL ARIZONA LIGHT & POWER COMPANY—LOCAL UNION B-387

Agreement was originally entered into February 1, 1945.

Expires on January 31, 1947.

Grievance and arbitration provisions

SEC. 1. There shall be established by the Union a committee of three employees who shall act in the case of grievances as hereinafter provided.

SEC. 2. A grievance for the purpose of this agreement shall be considered as any complaint on the part of an employee or employees in the Company's service for more than six months regarding the treatment he receives from fellow employees, foremen or Company representatives, dissatisfaction with working conditions, or any action on the part of the Company or Company representatives which he considers to be a breach of this agreement. Disputes over wages and wage scales shall not be deemed a grievance for the consideration of the committee provided by Section 1 of this Article.

SEC. 3. Any grievance shall be adjustable in the following manner and by the following steps:

First: Between the employee or employees involved and the foreman in charge; provided, however, that no agreement between any foreman and any employee shall supersede or modify any of the provisions of this agreement. Failing to adjust the grievance within two working days.

Second: Between the employee or employees involved and the Company's Personnel Director or his assistant and the head of the Company department in which such employee or employees are working. Failing then to adjust the grievance within two working days.

Third: The matter will be referred to the Employees Committee provided for in Section 1 of this Article, which shall first determine and decide whether the employee or employees involved have a bona fide grievance; and, if such Committee shall decide that a bona fide grievance exists, it shall meet with the Company's General Superintendent and Personnel Director or his assistant in

an endeavor to adjust such grievance. Failing to agree within three working days.

Fourth: Between the President or a Vice President of the Company and the duly authorized representative or representatives of the Union. Failing then to adjust such grievance within three working days thereafter, the same shall be referred to an arbitration board, as hereinafter provided, for settlement.

SEC. 4. Any grievance which cannot be adjusted under the provisions of Section 3 of this Article, and any differences that may arise between the Company and the Union concerning the over-all application or interpretation of this agreement or any provision hereof (as distinguished from its application to, or grievances of individual employees or group of employees) which the representatives of the Union and the Company are unable to settle, including differences concerning amendments to this agreement at any termination date, shall be referred to an arbitration board consisting of six members, three of whom shall be selected by the Company and three by the Union. A member of the committee provided by Section 1 of this Article shall not be qualified to become a member of such board.

SEC. 5. Arbitration may be initiated by either the Company or the Union, or an employee or employees under the provisions of Section 3 of this Article, as the case may be, by presenting a written demand for arbitration, with a brief statement of the facts and of the question to be arbitrated. Within three days after the presentation of such demand, each of the parties hereto shall file with the other party the names of the persons chosen by such party as arbitrators. The six arbitrators so chosen shall thereupon fix the time and place for hearing on the issues raised, and so notify the parties concerned.

SEC. 6. In the event a majority of the six so selected cannot agree upon any matter referred to them, a wholly disinterested persons shall be chosen by them as a seventh member of the arbitration board.

SEC. 7. In the event a majority of the six members of the arbitration board are unable to agree upon the selection of the seventh member of the board within ten days after the date they decide they cannot agree on the matter before them, then the parties to this agreement shall apply to a judge of the Superior Court of the County of Maricopa, State of Arizona, to be mutually agreed upon between them, and if a judge cannot be mutually agreed upon, then he shall be selected by lot; and such Judge shall appoint the seventh member of the arbitration board, who shall be a wholly disinterested and impartial person.

SEC. 8. All decisions of the arbitration board shall be in writing, signed by those concurring therein, and any such decision shall be final and binding upon both parties to this agreement and on any employee whose grievance has been submitted to such board.

SEC. 9. Each party shall bear the expense of preparing and presenting its own case, and the expense of its own arbitrators. The expense of the seventh arbitrator, and incidental expenses mutually agreed to in advance by the parties, shall be borne equally by the parties.

SEC. 10. Employees in the service of the Company six months or less, if discharged as being incompetent, shall not be entitled to the benefit of the provisions of this Article.

No-Strike Clause

It is expressly understood and agreed that the services to be performed by the employees covered by this agreement pertain to and are essential to the operation of a public utility and to the welfare of the public dependent thereon, and in consideration thereof and of the agreements and conditions herein by the Company to be kept and performed, the Union agrees that under no conditions, and in no event whatsoever, will the employees covered by this agreement, or any of them, be called upon or permitted to cease or abstain from the continuous performance of the duties pertaining to the positions held by them under the Company, and the Company agrees on its part to do nothing to prevent such continuity of performance of said employees, insofar as such performance is required in the normal and usual operation of the Company's business. The Union agrees that it will not permit its members to refuse to perform any work or handle any material, supplies, machinery, equipment, and the like because of the source of supply or the union affiliation or nonaffiliation of other Company employees or of labor engaged in the manufacture, sale, delivery, or supply of such material, supplies, machinery, or equipment.

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Exhibit No. 1-C

VOLUNTARY ARBITRATION

Pottery and Chinaware

ARBITRATION PROVISIONS OF THE CONTRACT BETWEEN THE NATIONAL BROTHERHOOD OF OPERATIVE POTTERS AND THE UNITED STATES POTTERS ASSOCIATION

Standing Committee

1. The Standing Committee shall be appointed as heretofore, to adjust matters that cannot be settled between the firm and employee. The Standing Committee shall meet at stated intervals of thirty days except during the months of July, August, and September, and all work in dispute shall be continued, pending and subject to the decision of the Standing Committee.

2. If at any time the members of the Standing Committee are unable to agree as to the merits of any case or proposition, pending before them, they shall select a seventh disinterested man, who shall have a vote on the merits of the case or proposition on which they have been unable to agree, the result of the vote shall be accepted and the decision rendered as coming from the Standing Committee as a whole. The members of the Standing Committee may, according to their own judgment, resort to secret ballot in rendering their decision.

3. Disputes referred to the Standing Committee and not settled within ninety days shall be referred back to the parties interested.

4. No settlement shall be regarded final or binding unless reported to the Standing Committee. Such report shall state the price and properly describe the article, together with the name of the firm and the individual making the settlement. These particulars shall be recorded by the Standing Committee.

5. Settlements made by the Standing Committee; four months shall be the maximum protest money paid in addition to the time the dispute is pending before the Standing Committee.

The Square Deal

1. In the interpretation and application of the wage agreement and uniform scale, both sides shall recognize the intent to establish a fair day's wage for a fair day's work. They shall not insist upon technicalities where the opposite intent is clear and when points arise not clearly and literally covered by the list, they shall be decided upon merit. They shall not be governed by what the wage scale may specify for something similar. When any material change from that contemplated by the uniform scale is made in the method of doing any particular work, or of making any particular article, rendering such work more difficult or more simple, full allowance shall be made for said change either by an increase or a decrease in the price as the case may be.

2. An earnest effort shall be made to avoid the small and insignificant differences which result in an attempt to take advantage of some clause which may not have been clearly worded to show what was the intent and understanding of the conference. The absence of taking advantage of technicalities or some action or error of an employee or firm will tend to the true spirit of cooperation, on which our agreements were originally and always have been based. Petty acts by representatives of either side should be frowned upon.

3. It is agreed that no price or condition shall be considered settled by reason of the fact that it has been agreed upon by a firm, not a member of the United States Potters' Association, or by a workman, not a member of the National Brotherhood of Operative Potters.

Penalty for Violation of Agreement

1. In view of the fact that the committees representing the United States Potters' Association and the National Brotherhood of Operative Potters are both empowered with full and final authority to act for their respective organizations in the formation of this agreement, it shall be considered that the individual members of both are parties to this contract, and should any individual member of either refuse to accept any condition herein, or should anyone withdraw from his organization by reason of his dissatisfaction with the terms hereof, such act shall be considered a violation of contract upon the part of that

individual, shall cancel his right to demand that he shall participate in the benefits and privileges of this wage agreement, and his right to demand that he shall employ or be employed at the rates and under the conditions specified.

2. Both parties to this agreement, through their duly authorized representatives of the conference committee, pledged themselves to use every honorable means to enforce the acceptance and observance of this agreement by all parties affected; to discourage any opposition on the part of individuals and to favor in every reasonable way those employers and employes who faithfully and honorably abide by this contract in all its provisions.

3. In case any question arises, which cannot be settled between an employer and his employes, or representatives of his employes, as to the correct interpretation of any clause, feature or provision of the wage agreement, the point shall be first referred to the proper National Officer of the Brotherhood. In case he and the firm cannot agree, then the question shall be referred to the Standing Committee. No local shall assume to settle upon its own authority disputes or points of disagreement between its members and their employers, but locals may, of course, carry such matters up to their National Officers, who in turn may submit them to the Standing Committee, or to the Labor Committee, if they otherwise cannot adjust amicably.

4. The intent of the foregoing resolution is to express what has always been understood, and necessarily so that questions in dispute which cannot be settled between individual firms and their workmen can only be settled by the proper representatives or committees of the two national bodies.

5. Any attempt to ignore this understanding shall be considered an explicit violation of the wage agreement, and shall cancel the right of the offending local to participate in the rights, privileges, and wages of said agreement.

Exhibit No. 1-D

VOLUNTARY ARBITRATION

Printing Industry

ARBITRATION CLAUSE IN AGREEMENT BETWEEN THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA AND THE AMERICAN NEWSPAPER PUBLISHERS' ASSOCIATION

The International Board of Arbitration shall consist of three members of the Board of Directors of the International Printing Pressmen and Assistants' Union of North America, and the three members of the Special Standing Committee of the American Newspaper Publishers' Association, or their proxies, and a seventh and disinterested member, who shall be selected by lot from a permanent panel of not more than ten impartial men, agreed upon by the representatives of the International Pressmen and Assistants' Union of North America and the representatives of the American Newspaper Publishers' Association. The representatives of either party may, by notice in writing to the other party, remove the names of not more than two men from the permanent panel so formed. Vacancies from any cause in the panel shall be filled immediately in the manner the original panel was selected. The seventh member shall act as chairman of the Board, and shall preside, put motions, etc., and shall be entitled to vote on all propositions which may properly come before the board in open session. He shall declare a motion carried only when at least a majority of the board shall have voted affirmatively thereon. At the conclusion of the hearing of a case the chairman shall retire and the other members of the board shall go into executive session and immediately take up a consideration of the issues involved. If in executive session a tie vote occurs on any proposition, or if there are any differences, questions or propositions which do not receive the vote of four of the six original members of the board, the chairman shall be called in to cast the deciding votes on all unsettled questions or propositions. When the chairman is called in, the disputed points shall be fully discussed by all members of the board, and the several views of the six original members explained to the chairman.

Exhibit No. 1-E

VOLUNTARY ARBITRATION

Elevator Manufacturing

ARBITRATION CLAUSE IN AGREEMENT OF INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, OPERATORS AND STARTERS AND THE NATIONAL ELEVATOR MANUFACTURING INDUSTRY, INC.

In the event of any dispute arising between the parties to this agreement which cannot otherwise be settled, the matter shall be submitted to arbitration, each party selecting two members and these four to select the fifth and the parties hereto hereby agree to accept the decision of such Arbitration Board.

Both parties further agree to submit differences that cannot be settled locally, to a National Arbitration Committee, which is hereby understood and agreed shall have power to enforce its decision by right of mutual consent for the protection of the public and the entire Elevator Industry; and it is further understood that pending their decision there shall be no stoppage of work.

The National Arbitration Committee for each of the two parties hereto shall consist of an equal number of representatives of the International Union of Elevator Constructors and representatives of the National Elevator Manufacturing Industry and shall be formed annually for the purpose herein provided for; and its decision shall be final and binding upon each party of this Agreement.

EXHIBIT No. 2

INDUSTRY-WIDE AND ASSOCIATION-WIDE BARGAINING

(Presented by William Green, president, American Federation of Labor)

The proposal that all contracts between employers and employees be confined to a local labor market strikes at the heart of the free collective-bargaining process. It would destroy long-established and mature collective-bargaining relations in many key areas of industry. Industrial peace was unbroken over a period of many years in many such areas because the scope of agreement between labor and management has been extended to cover more than one plant and more than one employer. Labor-management relations did not break down and no work stoppages occurred at the most critical stage of industrial conflict in the difficult transition from war to peace since V-J-day where effective machinery for direct and voluntary settlement of differences was developed through area-wide, association-wide, and industry-wide agreements. That is precisely the area the proposed legislation would invade and that is the procedure this legislation would outlaw.

In the glass bottle manufacturing industry, in the pottery and chinaware-manufacturing industry, in the stove manufacturing industry, in dress manufacturing, in pulp and paper manufacturing, and many others, there have been no strikes or lock-outs, no interruptions in production, and no cause for Government intervention during the crucial 20 months since the end of the war. In all these instances, area-wide, industry-wide, and association-wide A. F. of L. agreements proved to be the most effective instruments of labor peace. They have withstood the supreme test of inflationary pressures, dislocation, and discord of the most trying reconversion period. Yet these tested tools of industrial harmony and accord would be thrown on the scrap heap by the proposed legislation in the name of promoting industrial peace.

Government-dictated formulas were the real source of evil

The attack against industry-wide bargaining is aimed at conditions remote from free collective bargaining. It is directed at the evil which has already been eradicated by the termination of wartime controls over wages. Under the war-time wage-stabilization program, continued in peacetime until recently, wage terms and other conditions agreed to by a few firms dominating an industry were imposed upon other firms in the industry. In such instances, the bargaining process was confined to a few giant aggregates in the industry. The smaller firms were compelled to sign up without even a pretense at negotiations. The

"formula" was a part of a Government directive. Neither the employer nor the union had much choice: they acted under orders. In all such instances there was no collective bargaining. Industry-wide standards so imposed were not the subject of real negotiation or real agreement.

None of these instances, therefore, were instances of industry-wide collective bargaining. The very nature of the procedure used was repugnant to the voluntary process of free collective bargaining. Such procedure was often regarded as an evil by both employers and unions. That evil has been ended with the end of Government controls on wages and the end of the wartime regulation over labor disputes. The real target of the proponents of this legislation is now gone. The high-explosive charge they have readied against that target must not be belatedly misdirected and allowed to destroy the very roots of industrial peace.

Long-established agreements must not be destroyed by law

Proposed legislation would strike at the very areas where harmonious and peaceful relations have been achieved after years of building up mutual confidence and good will between labor and management.

The outstanding feature of collective bargaining relations in the areas of industry where peaceful relations have been firmly established is that the scope of collective bargaining agreement is determined by the parties themselves in order better to fit the agreement to the conditions prevailing in each particular situation. As our industry and trade represent a widely varying pattern, so the coverage of collective-bargaining agreements shows wide variation.

The agreement may cover an individual employer or a single plant of that employer or a single class of workers or a single craft. Or it may cover, as is often the case, a dozen or a score of plants of the same employer, located in every part of the United States, or it may be an association-wide agreement which is the result of a joint negotiation by a number of employers who have chosen to participate in the negotiation jointly. The effective coverage of a union agreement cannot be arbitrarily determined by one party to negotiations. The scope of the agreement and of the procedures and relationships it establishes can only be the result of a mutual accord reached by the representatives of the employers and the employees. It cannot be defined or enforced by law.

Industry-wide bargaining is the result of growth

The more extensive coverage of collective-bargaining agreements is the result of growth in collective-bargaining relations and is characteristic of their maturity. The variable and complex structure of bargaining units as it exists today must be viewed in the historical perspective of its development.

Sixty-six years ago, when the American Federation of Labor was formed, industry in general confined its production to local plants and was to a much greater extent producing for local, rather than national markets. Trade and services were almost entirely in the hands of local business enterprises. Consider for example that 90 percent of meat slaughter was then done by the farmer under a tree. In contrast, well over 90 percent of meat slaughter today is a part of a Nation-wide industrial operation in the hands of large Nation-wide industrial aggregates. Most flour milling was then done by local millers, located on or near the farms, not national industrial operations that we know today. There were no chain-store groceries and no coast-to-coast chain outlets for hats, dresses, and a multitude of other commodities. Large-scale mass production and mass distribution in a national market was then still in its infancy. Today it dominates the industrial scene.

These changing conditions have changed substantially the scope and nature of collective-bargaining relations. The growth of large-scale business enterprise and the increased organization of employees into trade unions called for the wider scope of coverage of union agreements and for more uniform treatment of labor standards negotiated through these agreements.

The record shows that the widening of the scope of collective bargaining beyond a single plant or a single employer has been often sought by employers themselves. Large corporations have frequently found it desirable to establish uniformity in wages, hours and working conditions among their several plants. In many instances a trade association has entered the collective-bargaining relations and has become the spokesman for its several member companies. At the same time, many unions have found that in areas where other production costs had been equalized, cutthroat competition was carried on at the expense of wage standards. Such wage competition, undermining the stand-

ards attained, with disastrous consequences to the community, could best be prevented through equalization of wage rates under association-wide agreements.

Industry-wide agreements provide machinery for peaceful settlement of disputes

In other situations the sole objective of both the employers and the unions was to establish an orderly voluntary procedure for negotiations, handling of grievances and the settlement of disputes. There are a number of Nation-wide agreements which cover such procedures, designed to safeguard peaceful relations in the industry. Such agreements leave wage negotiations to individual plants or establishments but provide a national or association-wide machinery for the settlement of disputes. Among the many examples of this type of agreement is one established between the American Federation of Grain Processors and the General Mills Corp. The Nation-wide collective agreement covers all of the corporation's plants but leaves wage determination to local bargaining. Many other affiliates of the A. F. of L. have negotiated over a period of years Nation-wide or association-wide or industry-wide agreements with employers in their respective industry or occupation. The attached tables summarize the extent of such agreements now in effect.

Many of the collective-bargaining contracts negotiated by more than one employer have been characterized by improvements in working standards together with greater stability and efficiency for the industry. In most cases, this has been accomplished without any work stoppages. In the pressed and blown glassware industry, for example, there has been no major strike since the start of industry-wide bargaining between the American Flint Glass Workers Union and the National Association of Manufacturers of Pressed and Blown Glassware in 1888. Here is a record of 60 years of uninterrupted industrial peace achieved through industry-wide collective bargaining.

Another example of long-established industry-wide bargaining is found in the pottery industry, which includes the manufacture of semivitreous table and kitchen articles known as earthenware, white ware, or semiporcelain; chinaware (frequently known as porcelain); bathroom fixtures; porcelain electrical supplies; and art, novelty, and stoneware articles. The National Brotherhood of Operative Potters, A. F. of L., has maintained an industry-wide collective bargaining agreement with the United States Potters Association since 1900. The agreement provides for uniform wage rates which are to be maintained in the light of certain specified conditions. In each branch of the industry, provision is made for a standing committee consisting of representatives of the union and the association with authority to make determinations with regard to rates of pay and other matters arising under the terms of the contract. The agreement has helped stabilize the standards in the several branches of the industry to provide means for working out practical compromises with regard to the questions in dispute and to maintain discipline. The wage level in the pottery industry, under industry-wide bargaining, has risen at no faster rate than in manufacturing in general, and the level of common-labor entrance rates in pottery is on a par with the average for all manufacturing.

National collective bargaining in the stove industry has also established an impressive record of industrial peace for a period extending over 50 years. A conference agreement established by the International Molders and Foundry Workers Union of North America in 1891 with the Stove Founders Association has to this day provided effective voluntary machinery for the settlement of disputes. A bipartisan conference committee is empowered to make a final and binding decision on all disputed questions.

There are similar types of agreements which, while they do not extend over the entire Nation or the whole industry, serve the same purpose within a particular region or a section of an industry. An example of this type of comprehensive agreement is one maintained in the pulp and paper industry by the Pacific Coast Association of Pulp and Paper Manufacturers and the two A. F. of L. unions, the International Brotherhood of Pulp, Sulphite and Paper Mill Workers and the International Brotherhood of Paper Makers. This agreement has been in existence for over 12 years and covers over 90 percent of the production in the west coast States. The contract is known as the uniform labor agreement, which includes a provision for a joint relations board of the pulp and paper industry in the Pacific area which acts as a court of final appeal for all disputes arising under the terms of the agreement. The decisions of the board, which have averaged about one a year, have been unanimous with only one exception and in every instance have been binding on all parties. Accord-

ing to a definitive study of wages under national and regional collective bargaining made by the industrial-relations section of Princeton University,¹ the benefits of this association-wide agreement have been great:

"For both the employers and the unions coastwise bargaining has simplified negotiations, increased understanding through joint activities, and provided stable relations. Both sides have had to consider the economics of the whole industry in the region and work out practical compromises. In a speech in 1941, one company executive stated: 'For we do have order and discipline in our industry, and a better esprit de corps than existing before the mills were organized by the two A. F. of L. unions having jurisdiction in our industry.'"

Among the many instances of association-wide bargaining agreements, a few additional examples deserve special mention. The United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, A. F. of L., maintains an agreement with the National Automatic Sprinkler Association in the sprinkler fitting industry. In the wallpaper manufacturing industry the United Wallpaper Craftsmen and Workers of North America, A. F. of L., maintains an agreement with the Wallpaper Institute. In the paper mill wire cloth manufacturing industry an association-wide agreement is maintained by the American Wire Weavers' Protective Association. In the elevator manufacturing and installation industry a long-established association-wide agreement is in effect between the International Union of Elevator Constructors, A. F. of L., and the National Elevator Manufacturing Industry, Inc.

In the case of the retail meat trade, the Amalgamated Meat Cutters and Butcher Workmen of America have maintained a national agreement with the National Association of Retail Meat Dealers. While this agreement serves as a basis for the promotion of positive policies of union-management cooperation, it does not cover wages or employment conditions which are negotiated locally. In the canning industry on the west coast, collective bargaining is conducted by the International Brotherhood of Teamsters, A. F. of L., on an association basis with employers in the area. The shipbuilding and boatbuilding industry on the west coast is covered by a master agreement negotiated by 'the metal trades department of the A. F. of L. on behalf of its constituent unions. Regional or area wide agreements with whole associations of employers have been maintained by A. F. of L. affiliates in women's clothing, men's hats, and millinery industries, as well as in a number of other industries and trades.

According to a study recently completed by the Bureau of Labor Statistics of the United States Department of Labor:

"More than 4 million workers are covered by agreements negotiated with associations and groups of employers. Most of the agreements are products of peaceful employer-union relations of several years' and some of several decades' duration."

Industry and regional bargaining has been successful in achieving its basic objectives, greater standardization of wages and employment conditions. This has meant greater stability for the industry, generally higher wages and at the same time fewer bankruptcies and a higher proportion of the firms returning a fair profit. This conclusion is supported by the findings of a special study recently completed by the industrial relations section of Princeton University. This comprehensive research survey, concludes:

"Under national or regional bargaining, wage decisions are likely to be more sensible and far-sighted, taking into consideration the economic interests of the industry as a whole, than is the case where the wage pattern for the industry is established by a wage 'leader' or by local bargaining, with the union playing one firm against another. Experience (e. g., west-coast pulp and paper in 1940) indicates that the union's wage demands may be more modest when they apply uniformly and simultaneously to all plants in a multiple-employer unit."²

Through the free collective-bargaining process, unions and employers mutually determine the form of their collective agreement and fit it to the most effective way of solving the problems both confront. In many cases over the past 50 years, the scope of these agreements has been enlarged in response to the growth of large-scale enterprises and the increasing interdependence of related business enterprises. Statutory limitation of labor agreements to a single locality is a direct attack upon the process of free collective bargaining. Any such attempt to confine collective bargaining to a specific area will turn back the clock of industrial progress.

¹ Wages Under National and Regional Collective Bargaining, by Richard A. Lester and Edward A. Robie. Industrial relations section, Princeton University, 1946, 103 pp.

² Industrial relations section, Princeton University, Study cited, p. 93.

EXHIBIT No. 2-A.—Partial list of collective-bargaining agreements between unions affiliated with the American Federation of Labor and employer associations or groups of employers

<i>Union</i>	<i>Association or group of employers</i>
Metal Trades Department, A. F. of L.	West Coast Shipbuilders.
United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry.	National Automatic Sprinkler and Fire Control Association.
United Mine Workers of America.	Anthracite Coal Operators.
National Brotherhood of Operative Potters.	United States Potters' Association.
Glass Bottle Blowers Association.	Glass Container Manufacturers' Institute.
United Wall Paper Craftsmen and Workers of North America.	Wall Paper Institute.
International Molders and Foundry Workers Union of North America.	Manufacturers Protective and Development Association.
International Union of Elevator Constructors.	National Elevator Manufacturing Industry, Inc.
Seafarers International Union of North America.	Pacific American Shipowners Association.
National Organization Masters, Mates and Pilots.	
International Brotherhood of Pulp, Sulphite and Paper Mill Workers.	Pacific Coast Association of Pulp and Paper Manufacturers.
International Brotherhood of Paper Makers.	
United Brotherhood of Carpenters and Joiners.	Columbia Basin Loggers' Association.
Amalgamated Meat Cutters and Butcher Workmen of North America.	National Association of Retail Meat Dealers.
Central States Drivers' Council, International Brotherhood of Teamsters.	Central States Area Employers Association Negotiating Committee.
International Ladies Garment Workers Union.	Various manufacturers associations.
International Printing Pressmen and Assistants Union of North America.	American Newspapers Publishers Association.

AMERICAN FEDERATION OF LABOR EXHIBIT No. 2-B.—Area of bargaining with association or groups of employers in selected industries.

BARGAINING ON NATIONAL OR INDUSTRY-WIDE SCALE

Coal mining.
Elevator installation and repair.
Glass and glassware.
Installation of automatic sprinklers.
Pottery and related products.
Stoves.
Wallpaper.

BARGAINING BY GEOGRAPHIC (REGIONAL) AREAS

Canning and preserving foods.¹
Dyeing and finishing textiles.¹
Fishing.
Hosiery.
Leather (tanned, curried, and finished).¹
Longshoring.¹
Lumber.¹
Maritime.

BARGAINING BY GEOGRAPHIC (REGIONAL) AREAS—continued

Metal mining.
Nonferrous metals and products except jewelry and silverware.¹
Paper and pulp.
Shoes, cut stock, and findings.¹

BARGAINING WITHIN A CITY, COUNTY OR METROPOLITAN AREA

Baking.
Beverages, nonalcoholic.
Book and job printing and publishing.
Building service and maintenance.
Clothing, men's.²
Clothing, women's.²
Confectionery products.
Construction.
Cotton textiles.
Dairy products.
Furniture.²

¹ There also is some bargaining on a city, county, and metropolitan area basis.

² There also is some bargaining on a regional and industry-wide basis.

AMERICAN FEDERATION OF LABOR EXHIBIT No. 2-B.—*Area of bargaining with association or groups of employers in selected industries*—Continued

BARGAINING WITHIN A CITY, COUNTY OR METROPOLITAN AREA—CON.

Hotel and restaurant.	Newspaper printing and publishing.
Jewelry and silverware.	Paper products, except wallpaper.
Knit goods.	Silk and rayon textiles.
Laundry and cleaning and dyeing.	Steel products, except stoves. ²
Leather products, other.	Tobacco.
Malt liquors.	Trade. ²
Meat packing.	Trucking and Warehousing. ²

² There also is some bargaining on a regional and industry-wide basis.

Source: Bureau of Labor Statistics, Department of Labor.

EXHIBIT No. 2-C.—*Prevalence of collective bargaining with associations and groups of employers*

[Percentage of workers under agreement]

80 to 100 percent:	20 to 40 percent—Continued
Clothing, men's.	Chemicals, excluding rayon and allied products. Clerical and professional, excluding transportation, communication, theaters, and newspapers.
Clothing, women's.	Confectionery products.
Coal mining.	Crude petroleum and natural gas.
Laundry and cleaning and dyeing.	Dairy products.
Longshoring.	0 to 20 percent:
Maritime.	Electrical machinery, equipment and appliances.
Shipbuilding and boatbuilding. ¹	Flour and other grain products.
60 to 80 percent:	Furniture.
Baking.	Knit goods, except hosiery.
Book and job printing and publishing.	Leather (tanned, curried, and finished).
Canning and preserving foods.	Light and power.
Construction.	Machinery and machine tools.
Dyeing and finishing textiles.	Meat packing.
Glass and glassware.	Metal mining.
Malt liquors.	Motorcycles, bicycles and parts.
Pottery and related products.	Newspaper offices.
Trucking and warehousing.	Nonferrous metals and products, except jewelry and silverware.
40 to 60 percent:	Nonmetallic mining and quarrying.
Building service and maintenance.	Paper and pulp.
Leather products, other.	Paper products.
Newspaper and periodical printing and publishing.	Petroleum and coal products, except refining.
20 to 40 percent:	Petroleum refining.
Beverages, nonalcoholic.	Railroad equipment.
Cotton textiles.	Rayon and allied products.
Hosiery.	Rubber products.
Hotels and restaurants.	Steel, basic.
Jewelry and silverware.	Steel products.
Lumber.	Stone and clay products, other.
Shoes, cut stock and findings.	Sugar, beet and cane.
Silk and rayon textiles.	Telegraph service and maintenance.
Trade.	Telephone service and maintenance.
Agricultural machinery and tractor.	Tobacco manufacturers.
Aircraft and parts.	Woolen and worsted textiles.
Automobile and parts.	
Bus and street car, local.	
Bus lines, intercity.	
Carpets and rugs, wool.	
Cement.	

¹ During World War II most of the industry was covered by tripartite zone standard agreements, signed by representatives of unions, employers, and certain Government agencies. The principal association agreement other than the zone standard agreements is between Pacific coast shipbuilders and the metal trades department of the A. F. of L. covering yards organized by A. F. of L. unions.

Source: Bureau of Labor Statistics, Department of Labor.

EXHIBIT No. 3

PREVALENCE OF UNION SHOP

According to the official figures of the Bureau of Labor Statistics, United States Department of Labor, over 13,800,000 workers were subject to collective bargaining in 1945, the latest year for which complete figures are available.

Of this number, 6,280,000 workers are covered by closed-shop or union-shop agreements. Of these, 4,200,000 were covered by the so-called closed-shop agreements (where all employees are required to be members at the time of hiring) and 2,080,000 were covered by the union shop (where employees are required to join the union within a specified period). In addition, approximately 3,900,000 workers were covered by maintenance-of-membership agreements providing that all employees who are members when the agreement is signed, or who join the union later, must retain their membership for the duration of the agreement. About 420,000 workers were covered by collective-bargaining agreements providing for preferential hiring and 3,200,000 workers were covered by other types of agreements. While the compilation of 1946 figures has not yet been completed, preliminary reports indicate that the distribution in 1946 was substantially the same as in 1945.

Figures showing comparative prevalence of union shop are summarized in the accompanying tables.

TABLE I.—*Union status of workers under collective-bargaining agreements, in 1945*

Union status	Number of workers	Percent
Closed or union shop.....	6,280,000	45
Closed shop.....	4,200,000	30
Union shop.....	2,080,000	15
Maintenance of membership.....	3,900,000	29
Preferential hiring.....	420,000	3
Other.....	3,200,000	23
Total under agreement.....	13,800,000	100

¹ This includes over 1,400,000 workers in the railroad industry, where virtual union shop conditions prevail, although the agreements do not provide for union shop.

Source: Industrial Relations Division, Bureau of Labor Statistics, U. S. Department of Labor.

TABLE II.—*Distribution of workers under union agreement by union status provided in major industry groups, January 1945*

Industry group	Percentage distribution				
	Union or closed shop	Member-ship main-tenance	Preferential hiring	Other	Total
All workers.....	46	27	2	25	100
All manufacturing.....	43	40	1	16	100
All nonmanufacturing.....	52	6	4	38	100
Construction.....	94	—	6	—	100
Mining.....	81	16	—	3	100

¹ About 38 percent of the workers under agreement in all nonmanufacturing industries were employed under contracts which included no membership requirements. However, more than half of these workers were in the railroad industry, where virtual union-shop conditions prevail, although the agreements do not provide for union shop.

Source: Bureau of Labor Statistics, U. S. Department of Labor.

TABLE III.—*Major industries where over 40 percent of workers under union agreement are under union or closed-shop provisions*

40 to 59 percent :

Cotton textiles.
Glass and glassware.
Leather tanning.
Paper and allied products.
Silk and rayon textiles.
Woolen and worsted textiles.

60 to 79 percent :

Bus and streetcar, local.
Canned foods.
Clothing (men's).
Hosiery.

Service occupations.
Shipbuilding.

80 to 100 percent :

Baking.
Breweries.
Clothing (women's).
Coal mining.
Construction.
Printing and publishing.
Trucking and warehousing.

NOTE.—Above distribution in major industry and occupation groups is as of January 1945.

Source : Bureau of Labor Statistics, U. S. Department of Labor.

Mr. GREEN. Thank you, gentlemen.

Senator BALL. Thank you, Mr. Green.

(Mr. Green submitted the following prepared statement:)

STATEMENT FILED BY MR. WILLIAM GREEN, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR, BEFORE THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, EIGHTIETH CONGRESS, FIRST SESSION, CONSIDERING VARIOUS LABOR RELATIONS BILLS

The following statement is an amplification of my oral remarks before this committee and represents the point of view of the American Federation of Labor in respect to the more important proposals in the form of bills before this committee dealing with the problem of labor relations in industry. The different proposals are discussed in somewhat greater detail than I have discussed them orally. It can be stated generally that none of the bills contain any constructive proposals or go to the roots of conditions or factors which, to a large extent, are responsible for any existing industrial unrest. All of the bills seem to be predicated upon the assumption that all strife between management and labor is due solely to union excesses, and that the remedy for our industrial ills is to curb and weaken unions by all imaginable means—indeed, by some means heretofore unimaginable.

I turn now to a discussion of the more important proposals before this committee. It is our sincere and considered judgment that the enactment of those proposals would be nothing less than calamitous to our national welfare.

S. 55. FEDERAL MEDIATION BOARD

Title I of S. 55, introduced by Senators Ball, Taft, and Smith, provides for the establishment of a Federal Mediation Board. We have no objection to any extension of the conciliation and mediation functions of the Department of Labor. However, it does appear to be completely unnecessary to create yet another administrative agency to accomplish what can be well accomplished with existing machinery in the Department of Labor. We believe that a greater fund should be appropriated to the United States Conciliation Service instead of adding another bureau to deal with labor affairs. The trend toward diminishing the functions and powers of the Department of Labor has already gone too far and should be reversed.

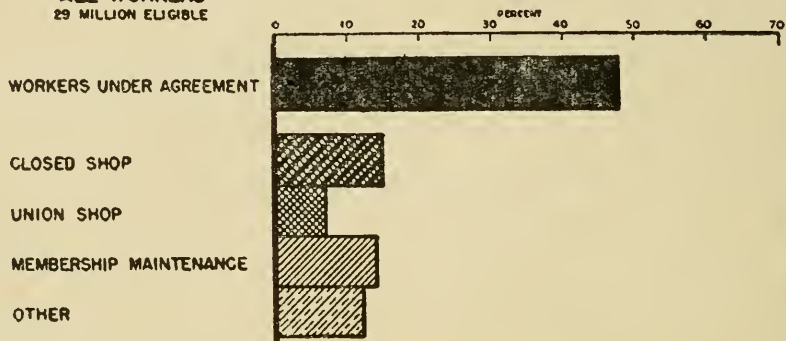
Cooling-off period

Organized labor takes strenuous exception to the provisions in S. 55 forbidding any strikes during the period that the Board is seeking settlement of a dispute by mediation or conciliation or for the period of 60 days following intervention by the Board, whichever occurs first.

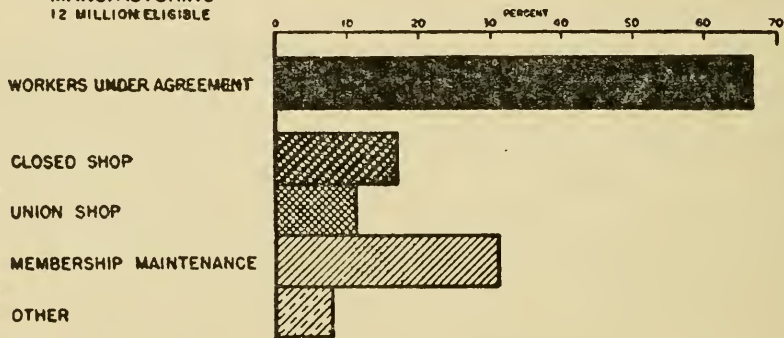
We have on several occasions explained the reasons for our opposition to the compulsory cooling-off period. First, we object to it on principle. It is an unjustified invasion of an essential liberty—the right to strike—and violates the spirit, if not the letter, of the thirteenth amendment prohibiting involuntary servi-

TYPE OF UNION RECOGNITION OF WORKERS COVERED BY AGREEMENTS IN 1945

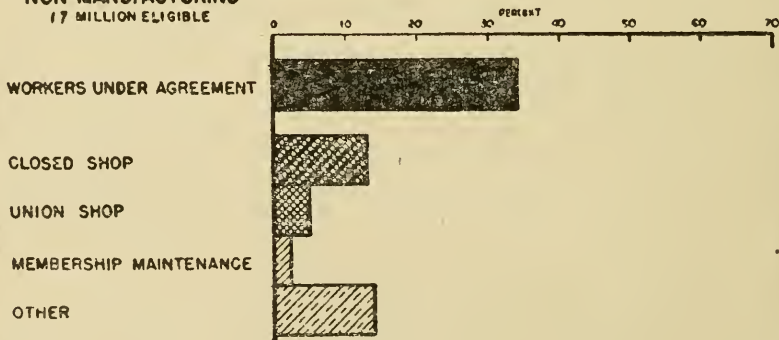
ALL WORKERS
29 MILLION ELIGIBLE



MANUFACTURING
12 MILLION ELIGIBLE



NON-MANUFACTURING
17 MILLION ELIGIBLE



tude. Second, it suggests what is completely untrue, namely, that unions call and engage in strikes at the drop of a hat, in a moment of heated excitement without any consideration for the welfare either of union members or of the general public and without allowing any opportunity for governmental agencies to attempt mediation and conciliation. That suggestion, I repeat, is utterly false and contrary to the demonstrable facts. Third, it is impracticable. It has not worked in the past, as overwhelmingly shown by our experience under the War Labor Disputes Act, and it will not work in the future. Unions faced with such a legislative freeze will be forced, in order to avoid its harsh consequences, rapidly to develop their differences with their employers into full-blown formal labor disputes in order to invoke the services of the mediation and conciliation agencies and immediately to start the 60-day period. Instead of a normal and friendly negotiation of differences which in the great majority of cases results in satisfactory agreements without any interruptions in work, negotiations would necessarily begin with a formal commitment to strike on the part of the union, made to insure compliance with the law. Such a situation would hardly be conducive to constructive bargaining results. Finally, a 60-day waiting period would make many strikes completely ineffective. In seasonal industries such as the canning industry, to name but one of many, the producers could very well process an entire year's crop in a 60-day span. In the construction industry a major portion of the building or repair work which is under way could be completed in a 60-day interval; many entire factories have been constructed in approximately that time. In industries such as the record industry, the record makers could cut and stock-pile sufficient records in a 60-day period to last for several years. And in all industries a 60-day waiting period would give the employer full opportunity to take all necessary steps to defeat the strike thus depriving labor organizations of the timing element—the most important factor in the success of any strike.

Restrictions on payments to unions and union representatives

Section 201 of title II of S. 55 apparently is an attempt to prevent bribery of union officials and to restrict and regulate the establishment of so-called welfare funds. These objectives are achieved by a blanket and sweeping prohibition against contributions or payments of any sort by employers to unions or union representatives followed by an enumeration of certain limited exceptions to the prohibition. These exceptions, however, are so narrow and so limited as to leave open for prosecution a vast number of innocent and customary transactions between employers and unions or union representatives. Among the most important of these customary transactions is the dues check-off arrangement established through the process of collective bargaining.

In 1945 slightly over 5.3 million workers or about 39 percent of all employees under agreement, were covered by check-off provisions. Not only is the check-off a relatively common provision but it is one of long standing, existing for more than 40 years in some industries. There is no question but what the thousands of such presently existing check-off agreements would be outlawed by section 201. I am advised by counsel that under principles of contract law there is a strong possibility that should the check-off provision in such agreements be rendered illegal by statute then the parties to the agreement would have the right to consider the entire agreement at an end. Since there has been no serious criticism of the check-off arrangement on moral or other grounds, it seems of doubtful wisdom even to risk the automatic termination of so many collective agreements which assure stability in industrial relations and continued production of necessary commodities.

If, indeed, it is bribery alone which the proponents of the bill seek to prevent, it would easily have been possible to limit the prohibitions to actual bribery attempts by specific definitions rather than to sweep customary and innocent transactions into a legislative catch-all. It is wrong, however, to assume any need for Federal legislation in this field. Section 8 (2) of the Wagner Act, already forbids financial contributions to unions, and existing State laws are adequate to deal with other such abuses.

Turning now to the restrictions on welfare funds, it is to be noted that such welfare funds can be established only for certain limited purposes. Conspicuously absent from the list of purposes to which a welfare fund may be applied is that of providing unemployment benefits. There are funds in existence today which do provide for benefits to unemployed workers or create jobs for such unemployed workers. Should this bill become law, those funds must be terminated, or else persons participating in them are subject to a fine of not

more than \$10,000 or to imprisonment of not more than 6 months, or both. There is no reason why the union should not be able to establish and administer funds to guard against the constant risk of unemployment resulting from technological displacement and other reasons. Management is always the first to cry out against strikes conducted against labor-saving devices. Under section 201 labor is prevented from attempting, through the process of collective bargaining, to achieve a condition which will make such strikes unnecessary.

Section 201 further provides that any welfare fund that is established must be administered jointly by the employees involved and the employer. While there can be no particular objection to joint administration, it is difficult to see why, if the parties so desire and have so agreed in the process of collective bargaining, the fund cannot be administered by the employer alone, the employees alone or by the union. To require joint administration in advance of negotiation would seem an unwarranted interference with the collective bargaining process. Further unwarranted circumvention of the collective bargaining process results from the requirement that the fund be administered by employees rather than by their duly chosen union representative. While subsection (c) (4) (B) may not be intended to prevent union participation in administration, nevertheless the careful use of the word "employees" throughout and avoidance of the words "representative" and "labor organization" might very well require that the union involved be excluded entirely from administration.

A final objection to section 201 is the removal of limitations upon injunctions in labor disputes contained in subsection (e). It would seem that the criminal penalties attached under subsection (d) would be more than sufficient to prevent violations, and that it is merely courting abuse of the injunctive process to open up the Norris-LaGuardia Act for the purpose of further enforcing section 201.

Elimination of supervisory employees from protection and benefits of the Wagner Act

Section 202 of S. 55 removes supervisory employees from the Wagner Act. Under the definition of "supervisor" contained in subsection (b), the term is extended to include many categories of employees whom no one has ever regarded as being supervisors and who attain that status only by arbitrary, unrealistic definition. Thus, watchmen, guards, and other plant-protection employees who often work unreasonably long hours at unreasonably low wages, and certainly require the benefits of organization, would be excluded from the act under the proposed definition, and, in addition, such categories as lead men, inspectors, graders, and perhaps sorters and time-keepers, would likewise be excluded. In addition, many categories of supervisory employees who traditionally have enjoyed the benefits of organization, and since 1935 the protections of the Wagner Act, would be excluded; in this connection it is interesting to note that section 202 does not exclude from the definition of "supervisory employees" employees who, under the prevailing custom prior to July 1, 1935, were covered by collective-bargaining agreements. Such an exclusion was contained in the Case bill passed by both Houses of Congress in the last session.

It is not only unfair but absurd to exclude supervisory employees from the benefits and protections of the Wagner Act. It is to be noted that section 202 does not deny to supervisors the right to resort to economic force in order to achieve recognition and engage in collective bargaining rather than to resort to the peaceful processes of the National Labor Relations Act. In other words, the same proponents who have been loudly decrying the exercise by working men and women of their basic right to strike, and who seek to limit that basic right in several provisions of the present bill, in effect direct supervisors, in the same bill, to strike as the only means of achieving their admittedly necessary and lawful objectives. Regardless of how many laws are passed, it is certain that any group of employees, be they supervisory employees or others, who feel themselves sufficiently aggrieved in their employment will assemble together in some form of association or other for the purpose of mutual aid and protection. The constitutional right of assembly would seem to assure at least that to them. If no peaceful means of securing recognition is available to them, they will resort to their only alternative, namely, peaceful refusal to work.

Suits against labor organizations for breaches of collective-bargaining agreements

Labor can have no quarrel with the proposition that both unions and employers should be equally responsible under collective-bargaining agreements. However, labor strenuously opposes any suggestion that additional legislation is necessary in order to bring about union or employer legal responsibility for

breaches of agreements. The union can be sued in its own name in most States, and where it cannot thus be sued can be sued as any other voluntary, unincorporated association. Additional Federal legislation, providing for suits against unions, could only have the effect of encouraging resort to litigation instead of resort to mediation or arbitration in disputes over claimed contract breaches. A labor contract, embodying as it does human relationships, differs vastly from an ordinary commercial contract as for the sale of houses or washing machines. The courts, which are bound by rigid legal rules and technicalities, simply are not equipped to administer labor agreements. It is fortunate, indeed, that labor, on its part, has sought relief from claimed employer breaches of collective-bargaining agreements through the process of arbitration or mediation rather than attempt to resort to the courts in each of the thousands of grievance cases which arise daily in the administration of labor agreements. It is to be borne in mind that each of these grievances constitute claimed breaches of the agreement, which would entitle the union involved to take the matter into the Federal courts under the present proposal.

Court litigation simply is no solution for labor problems; in fact, resort to courts implies a break-down of the collective-bargaining process. Thus, those who seek to inject legal procedures and technicalities into the collective-bargaining relationship must be regarded as attempting to create a collapse of the collective-bargaining process itself through encouraging resort to months, and perhaps years, of legal proceedings in trial courts, in intermediate courts, and finally in the highest appellate courts. Litigation does not produce commodities.

A further and quite obvious objection to any encouragement to resort to court litigation in disputes arising over collective-bargaining agreements lies in the complete impracticality and ineffectiveness of court determination of the vast majority of such disagreements. The employee-employer relationship is a dynamic one shifting from day to day, and almost invariably any determination arising only weeks or even days after a dispute has arisen would be of little practical advantage or use in adjusting such relationship.

A final objection to section 203 arises in connection with the attempt under subsection (b) thereof to modify the provisions of section 6 of the Norris-La-Guardia Act relating to union responsibility for unauthorized acts. Under subsection (b) it would be no longer necessary to show that a union had actually authorized an officer to take certain action in order to hold the union responsible for such action if it should later be found to be unlawful in any respect. The union would be subject to suit for damages for acts of individual officers or representatives and perhaps members, though such actions might be against the expressed direction of the majority of the union and, as a consequence, the funds which the members of the union had established by the payment of their dues for their own protection and for the improvement of their status would be lost.

Prohibitions against boycotting and other unlawful combinations or conspiracies

Section 204 contains the most objectionable provisions of the entire bill; its provisions are indeed startling. It not only makes secondary boycotting, striking, and picketing illegal, but restores the entire doctrine of criminal conspiracy so abused in the past. In addition, it outlaws strikes by minority groups under any and all circumstances and regardless of possible provocations. Finally, in connection with the removal of the limitations of the Clayton and Norris-La-Guardia Acts, it uses language which can quite easily be construed to outlaw any strike or picketing which operates in any way to restrict production or distribution in interstate commerce.

The foregoing objectives are achieved under sections 204 (a) (1), 204 (a) (2), and 204 (e). It is necessary to discuss each of these provisions separately in order to appreciate their full significance and implication.

Section 204 (a) (1) provides that it is unlawful to engage in any combination or conspiracy through strikes or threats of strikes, or any other refusal to work on or handle specific articles or materials, for the purpose of requiring an employer to cease using, selling, handling, or transporting the products of any other producer or manufacturer. Under this, the so-called secondary boycott in all its aspects is prohibited under threat of fine or imprisonment, liability for triple damages, and use of the injunctive process. Workers can no longer refuse to deal with employers whose practices may lead to the ruin of their working conditions; they cannot refuse to deal with or work for anyone who does business with or otherwise assists unfair employers.

Only an enraged and vindictive determination to punish labor, no matter what the effect on labor's and the entire public's welfare will be, can explain this pro-

posal. It simply ignores and confounds the most elemental realities of the free-enterprise competitive system. Whether intended or otherwise, the proposal, if enacted, would go far toward restoring the intolerable evil of the sweatshop and all of the disastrous economic consequences that the sweatshop implies. That is so because in many instances it is impractical or impossible for a host of reasons to establish decent work standards save by peaceful, economic pressure brought to bear on the customers or suppliers of unfair employers. The operation of a substandard plant means that the fair and humane employer, anxious to maintain decent work standards and adequate mass consuming power, must, out of pressure of competition, either be forced out of business or abandon his fair and humane practices. It means the decimation of one of the most constructive contributions made by organized labor to American progress and the American way of life, namely, the elimination of competitive advantages based solely on the crude exploitation of human beings. It means, finally, that the working people of this country would be compelled by law themselves to destroy the standards of living achieved over the years.

That the foregoing result is plainly intended and, indeed, made certain of accomplishment is seen from the narrow definition of "labor dispute" as set forth in section 301 (3) of the bill, which provides:

"The term 'labor dispute' means any dispute, concerning terms, tenure, or conditions of employment between an employer and his employees or their duly designated representatives."

It was precisely by misconstruing the Clayton Act and having it read as though it contained the phrase "his employees" that the majority of the Supreme Court, in the Duplex Printing and Bedford Stone cases, succeeded in frustrating the will of Congress and in imposing an artificial and detrimental impediment on the natural and constructive growth of trade unionism. The disastrous consequence of those decisions—which were the subject of bitter condemnation by all political parties and by all persons desirous of conforming law to economic and social realities—will most certainly be repeated if Congress now does the very thing it condemned the Supreme Court for doing.

Until employers in their business relationships are prepared to give up their right to refuse to deal with anyone whose business practices are detrimental to them, unions will not be prepared to give up their right to refuse to deal with any employer whose labor practices are detrimental to the interests of their membership, and certainly it is difficult to see any moral or economic justification for requiring labor to assist in its own destruction as by working upon non-union-made goods. As stated by Justices Brandeis and Holmes in the Duplex Printing Press Co. cases:

"May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it? * * * Courts, with better appreciation of the facts of industry, recognized the unit of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself. * * * It is lawful for all members of a union by whomever employed to refuse to handle materials whose production weakens the union."

The question of so-called secondary boycotts is closely related to that of industry-wide bargaining, since both seek to eliminate wages and working conditions as a factor in competition among employers. The foregoing comments, therefore, should be considered by the committee in connection with my later discussion of S. 123, dealing with industry-wide bargaining.

Section 204 (a) (2) makes it unlawful for employees to engage in a strike for recognition or for improvement in wages, hours, or working conditions in all cases where the employer is not required to recognize or bargain with such labor organization under the provisions of the National Labor Relations Act. Since the National Labor Relations Act requires any employer only to recognize and deal with the labor organization representing a majority of employees in an appropriate unit, this would operate to make unlawful all strikes or other concerted action of minority groups either to obtain recognition or to obtain some adjustment in wages, hours, and working conditions, or in respect to grievances.

In cases where organization of employees has not extended to the point where a majority have chosen a union, the minority employees who do belong to a labor organization would be unable to resist wage cuts by strike action, would be unable to attempt to improve their wages or working conditions or adjust grievances by strike action, and even would be foreclosed from striking in protest over unfair practices of employers, no matter how excessive, abusive,

or unlawful. Minority groups simply would have no standing for any purpose whatsoever, insofar as their right peacefully to withdraw their employment in concert is concerned. Certainly it is the basic right of any citizen of a free country to cease employment at any time that any given conditions become intolerable to him, and he can do that singly, or in the company of a minority of his fellow workers, or in the company of all of his fellow workers. Accordingly any flat limitation upon that right as to any group of employees, be they a minority group or a majority group, is intolerable in a free, democratic society, and certainly would be unconstitutional if the thirteenth amendment has any meaning. As stated recently by the Supreme Court of Alabama in *Alabama State Federation of Labor v. McAdory, et al.*, 246 Ala. 1:

"We are persuaded also that that part of section 13 of the act making it unlawful to strike except when it is authorized by vote of the majority of the regular employees working in the business, plant, or in such unit thereof expressed by a secret ballot cannot be sustained. As we have previously noted, each individual employee has a right to strike for a legally justifiable purpose, and such a right, of course, rests upon a minority as well as upon a majority, * * *

"This section makes no distinction in what the authorities refer to as a lawful strike. It must be construed, therefore, as having application to a perfectly lawful strike for a lawful purpose conducted in a lawful manner. The question, therefore, is whether or not a small group of individuals, for a legally justifiable reason, may be denied the right to strike unless it is by secret ballot, authorized by a majority of the regular employees working in the plant or in the business.

"Of course, as we have observed, the right to strike or to refrain from work is a personal, individual right. Reduced to its last analysis, therefore, the question arises as to the reasonableness of a regulation making the right to a strike dependent upon the will of others who may not in any manner be connected with, or interested in, the welfare of the minority group. Indeed, these other employees may not belong to or believe in a labor organization."

* * * * *

"We are well convinced that a prohibition to strike placed upon a minority group, unless sanctioned by secret ballot of others who are without interest in their welfare, is an unreasonable and arbitrary restraint and must be stricken down."

Even if a majority of employees have joined a labor organization, they still cannot attempt with impunity to a strike for recognition or in support of legitimate demands. This is for the reason that they may not be able to prove their majority in a court of law, and unless such majority can actually be proved the employer need not recognize them under the Wagner Act. Furthermore it may be that the unit in which they claim a majority is inappropriate, and an employer need not recognize even a majority union if the unit in which it seeks representation is inappropriate under the act. It is difficult, if not impossible, to determine in advance in all cases whether any given unit is appropriate or not. The practical result of subsection (2), in view of the extreme penalties for violations, would be to require employees and labor organizations in all cases where strike action might be contemplated to proceed before the Labor Board for a determination of unit and for an election and formal certification with, in all likelihood, subsequent court appeals in respect to different issues that might be raised in the course of the proceedings. Many thousands of labor organizations are dealing with employers throughout the country without having first proceeded before the National Labor Relations Board; indeed, the Board was set up to deal only with situations where the employer would not voluntarily enter into collective bargaining relationships with unions. If, as a result of this bill, all unions throughout the country which have not had formal certification are obliged to resort to Labor Board proceedings with consequent delays before they can safely engage in any strike action of any nature or for any reason whatsoever, then, indeed, the ability of labor organizations throughout the country to protect the interests of their membership would be destroyed.

Subsection (e) of section 204 removes the substantive protections of the Clayton Act in respect not only to boycotts but in respect to alleged conspiracies to restrict production or distribution. In addition, the procedural limitations contained in both the Clayton and the Norris-LaGuardia Acts on the issuance of injunctions in such cases is removed. It should be carefully noted that the provisions of the Clayton Act and the Norris-LaGuardia Act are removed not only insofar as alleged violations of subsections (1) and (2) of section 204 (a) are concerned (which sections relate to so-called secondary boycotts and so-called

minority strikes as discussed above), but, in addition, go on to remove the protections of the Clayton and Norris-LaGuardia Acts in respect to any conspiracy "to restrict production, distribution, or competition, or impose restrictions or conditions upon the purchase, sale, or use of any material, machines, or equipment." Thereby, the old doctrine of conspiracy has been revived in its entirety. Indeed, under the phrase "conspiracy to restrict production," or restrict "use of any machine or equipment," any ordinary strike for any ordinary labor objective which has the effect of interfering with production or which attempts to resist a speed-up or inadequate manning is declared enjoined under subsection (e)—a step far beyond what has ever been attempted before, even in the worst days of prosecutions of labor unions under the antitrust laws. That such a proposal is actually being made may seem unbelievable, but the literal language of subsection (e) can admit of no other conclusion. The era of government by injunction will have been revived with a vengeance.

Taken in its entirety, section 204 has effectively nullified every prolabor decision that has been rendered since the enactment of the Norris-LaGuardia Act. It will be recalled that the vast preponderance of cases in which the injunction was so indiscriminately applied in labor disputes were premised on alleged violations of the antitrust laws, and mostly in situations involving the precise objectives that are sought to be outlawed by this section.

The inexcusable abuse of the injunction, the national shame of government by injunction, reached its first political climax in 1914. By that time the vast majority of the country was completely aroused over the perversion of the Sherman antitrust law and the flagrant indecency of the labor injunction to strangle legitimate and necessary labor activities. In response to the public clamor generated by the Danbury Hatters' case and other antitrust cases, the Congress passed sections 6 and 20 of the Clayton Act, under which sections it was made abundantly clear that working men and women could refuse to deal with antiunion employers or to use their products; that they could ask their friends to do the same, and that they could refuse to deal with anyone who did business with unfair employers—objectives outlawed under section 204.

The second political climax reached its height in 1932. In the intervening period the Federal courts had crassly ignored the plain mandate of the Clayton Act, and injunctions flourished as never before. The two outstanding cases of that period were *Bedford Stone Co. v. Journeymen Stone Cutters' Association* and *Duplex Printing Co. v. Deering*. Here again, the cases arose out of an attempt on the part of unions to induce certain persons by peaceful means not to use the products of unfair manufacturers. The complete injustice of the decisions in these cases was forcefully and incisively set forth in the dissenting opinions of Justices Brandeis and Holmes. In the Bedford Stone case, they said:

"Members of the Journeymen Stone Cutters' Association could not work anywhere on stone which had been cut at the quarries by 'men working in opposition' to it, without aiding and abetting the enemy. Observance by each member of the provision of their constitution which forbids such action was essential to his own self-protection. It was demanded of each by loyalty to the organization and to his fellows. If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman law and the Clayton Act an instrument for imposing restraints upon labor which reminds one of involuntary servitude."

This time Congress responded with the Norris-LaGuardia Act, expressly and completely adopting the Brandeis-Holmes philosophy. That act was the first comprehensive labor code enacted in this country. It was the subject of several years of the most exhaustive study and hearing ever had on a labor bill. It sought to remedy the accumulated mistakes of half a century and to set forth a basic, fair policy for the future of industrial relations in the country. The Supreme Court of the United States this time gave full force and effect to congressional policy and enactment.

Section 204 of S. 55 repudiates that entire history; it is a viciously arbitrary retrogression which cannot be condemned too severely. The advance, the struggle, the study, the experience of some 50 years would be entirely negated by section 204.

A final objection to the entire principle of invoking injunctive sanctions against labor organizations or their members for their, as distinguished from employer, violations of Federal labor laws lies in its manifest one-sidedness. The National Labor Relations Act has established the principle that violations of national labor policy shall be remedied or prevented by cease-and-desist orders made by an expert body after an opportunity to be heard. The desist order can contain

remedial provisions, but it is entered into only after the parties accused of the violations are given a full opportunity to present their defense. Certainly, if the sole sanction against employers for acts which violate Federal labor law and which may operate to destroy labor organizations is to summon such employers before a board to answer for their conduct after a full hearing before an expert labor tribunal, there can be no excuse for imposing a different and much more drastic sanction namely, the immediate injunction by a nonexpert court—upon labor organizations or employees who are members of labor organizations for their violations of Federal labor law. The abuses of the ex parte injunction are so notorious as to require no comment other than to say that thereby effective union action to protect legitimate interests were stifled for over a quarter of a century. Certainly, if employers are entitled to a hearing before action is taken against them, labor organizations and their members are entitled to similar hearings. Further, if employers are entitled to hearings before a specialized tribunal which is expert in labor matters, labor organizations and their members should be entitled to a similar privilege rather than be subjected to ex parte decrees of Federal judges, many of whom have had no experience whatsoever in the labor relations field. Thus, if for no other reason than the manifest discrimination embodied in the principle that one set of sanctions is to be invoked against employers for their violations of Federal labor laws and another and greatly more drastic set of sanctions invoked against labor organizations and employees who are members of labor organizations for their violations, section 204 (e) must be opposed by organized labor and, for that matter, by any fair-minded person.

Registration and financial accounting of labor organizations

If section 205 embodies the principle that labor organizations are subject to licensing by the Government, and thus exist only at the sufferance of the Government, it must be opposed. If it is mere registration, then there is no objection in principle. However, on the practical side, it is to be noted that the required report concerning internal affairs of labor unions, and in particular concerning the state of their finances, is to be made available not only to union members but to the general public. Since, through public filing, a union's financial position is made known to the employer, that employer's willingness to bargain and his good faith in making counterproposals may very well be conditioned by his estimate of the union's ability to weather either a lock-out or a strike. It is certain that public disclosures, which mean disclosures to the employer, will result in a crippling of the bargaining process.

In concluding my remarks in respect to S. 55, I must state with all the vigor at my command that the various proposals contained therein, far from solving our industrial problems, can only have the effect of very seriously weakening the entire industrial structure. The compulsory 60-day cooling-off period applicable to all industries regardless of circumstances, the prohibitions against boycotting, the revival of the doctrine of conspiracy and return to the era of government by injunction, and finally the prohibitions against economic action by minority groups, all and each of them constitute a retrogression and return to the employer excesses and domination of the past. It is difficult to understand how anyone who professes, as on various occasions have Senators Ball, Taft, and Smith, and other members of this committee, to believe that a strong and healthy trade-union movement is indispensable not only to the welfare of American workers but to the health of the national economy can consistently support the measures contained in this bill.

S. 105. OUTLAWING THE UNION SHOP

Senator Ball's bill, S. 105, seeks to outlaw completely any and all types of closed shop, union shop, or other union security agreements. This objective is accomplished in two ways: First, by making it an unfair labor practice and a violation of the Wagner Act for any employer to enter into such agreement; and second, by making it a crime for any labor organization to make, to enforce, or even to seek any such agreement. Thus, the bill seeks to impose a compulsory open shop on American industry and American labor, and this even though the majority or, for that matter, 100 percent of the employees involved had selected a union and desired to work under union shop conditions and the employer was willing to grant such conditions. This proposal, outlawing the union security principle throughout American industry, is not only bitterly reactionary, but flouts over 100 years of traditional industrial practice and returns organized labor to the same status it occupied at the very beginning of its struggles for recognition. It portrays a profound ignorance of economics and economic

philosophy and a deep misunderstanding of the purposes and functions of the union security principle. As long ago as 1902 a congressional industrial commission reported the urgent and justified necessity of the union security principle, saying that "the final result" of the open shop "will be the destruction of the organization."

Volumes have been written concerning the moral and economic justification for the union shop or union security principle. Here only the high lights can be touched upon.

There is probably no right other than the right to strike which organized labor deems more consecrated or more indispensable to its continued maintenance and well-being than the right to seek and obtain union security agreements through the process of collective bargaining. The labor movement believes, and with historical and practical justification, that the all-union shop constitutes an effective, indeed an indispensable means of achieving—

(1) Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity;

(2) Equality of bargaining power, with consequent betterment of working conditions by insuring labor unity in the contest for a fair share of the joint products of capital and labor;

(3) Protection of working standards by preventing cutthroat wage competition by nonunion employees;

(4) Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such benefits as members of the union rather than as free riders; and

(5) The preservation and maintenance of organization once organization has been achieved so as to free union energies for constructive rather than defensive uses.

Many years ago, Chief Justice Taft well expressed one of the fundamental philosophies underlying the union security principle. In speaking for the Court in *American Steel Foundries v. Tri-City Council* (257 U. S. 184, at 209), he stated:

"To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because, in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership, and especially among those whose labor at lower wages will injure their whole guild."

The salutary functions of the closed shop in preserving industrial peace and in promoting employer-employee cooperation and harmony were commented upon in a somewhat recent report of the Magnuson subcommittee reporting on private shipbuilding companies on the Pacific coast (77th Cong., 2d sess.), in which it was stated in respect to the Pacific coast closed shop master agreement that:

"Generally speaking, your committee found a stabilized labor condition, insofar as the practical application of wages and hours, union rules, and other regulations were concerned. We believe this to be due primarily to the fact that there exists on the west coast, after many conferences between the shipbuilders, the workers, and the Government, what is known as a master agreement which has done much to stabilize and minimize labor difficulties. * * * The master agreement existing on the west coast has done much to stabilize and minimize labor difficulties."

It is desirable not only from an equitable point of view that all be required to participate in the expenses and cost of obtaining and maintaining working conditions, but also from a democratic point of view, as a means of assuring all employees a voice in collective-bargaining negotiations by giving them a standing in the union that represents them.

Furthermore—and this is very important—a union is able to maintain all of its obligations under its contracts only if all employees covered by the contract are members of the union. The union acts only through its members and their elected officers and cannot be expected to police an agreement thoroughly if only some of the employees are members of the union and thus subject to its rules, laws, and discipline.

That the union shop principle has become a characteristic and established part of the American industrial system is seen from recent Bureau of Labor Standards figures which show that approximately 75 percent of all workers in

all industries covered by agreements are presently embraced under one form or another of union security provision. In view of the important place the union shop principle occupies in the philosophy and tradition of the trade-union movement, and in view of the institution it has become in American industry, suggestions completely to outlaw the union shop relationship through legislative action must be unalterably opposed. The vast disruption of our economy that would result from the adoption of such suggestion cannot be overemphasized. It can be categorically stated that every no-strike clause in every agreement which also has a union shop provision will be regarded by the contracting union as no longer effective. That is so because the no-strike clause is completely dependent upon the union shop clause; only by exercising the disciplinary power granted by the closed shop contract can the union hope to fulfill its commitment to prevent strikes.

Protagonists of laws to outlaw the closed shop adopt as their slogan "The right to work," and assert that the closed shop denies that right. This is nothing but propagandistic hogwash. It is not a little ironic to witness the spectacle of the same reactionary employer groups that for years sponsored and enforced such vicious practices as the black list now trying to obscure their selfish interests behind the smoke screen of the individual employee's right to work. It is organized labor, and not those groups, to whom the right to work is truly precious. It goes without saying that trade-unionism is built and dependent upon that very right. But we deny that any person is denied his right to work when his failure to obtain employment in a union shop is due only to his own voluntary act in refusing to become or remain a union member although membership is open to him under reasonable terms. As well might an attorney who refuses to join and pay dues to an integrated bar assert that he has thereby been deprived of the right to practice his profession. While the right to work without joining with his fellow workers for mutual aid and protection might be sacred to some employees, to other employees the right to work only in the company of his fellow union members is equally sacred. Interference with either by the compulsion of legislative fiat is offensive to democracy and to freedom. Moreover, for the Government to lend its support to the nonunion worker in disregard and to the injury of the union worker works a manifest and unjust discrimination. Additionally, it contravenes the majority principle, because under the Wagner Act the wishes of the majority of the employees, be they union or nonunion, govern. With equal grace (although with greater economic and moral justification) might the Government decree a compulsory closed shop, yet the most rabid prounionists have not proposed that.

The Wagner Act does not, of course, compel union security agreements. It merely provides that the employer and the union may bargain concerning the union shop if the union proposing union security is the representative of the majority of the employees. By so providing, the act has undoubtedly saved untold work-hours that might otherwise have been wasted in striking over the refusal of an employer even to discuss a matter so vital to the organized labor movement. By the same token the removal of such a traditional subject matter as union security from the scope of collective bargaining under the National Labor Relations Act would assuredly intensify industrial strife.

It constitutes an arbitrary interference with the freedom of contract guaranteed by our Federal Constitution, thereby undermining the very foundation of our free-enterprise system. Moreover, any such complete prohibition would be grossly discriminatory as against labor organizations. Under the law, labor organizations are obliged to represent, on a completely equal basis, all within the bargaining unit. Any benefits or improvements obtained through union action must be extended to all within the unit, regardless of whether or not they are members of the union. In spite of this compulsion, this bill would prevent a union from attempting to secure by voluntary agreement equal contribution by all who are benefited; it unfairly benefits the nonunion employee who parasitically seeks a free ride. This is, in our opinion, a manifest denial of the constitutional principle of equal protection of the laws.

S. 360. AMENDMENTS TO THE WAGNER ACT

By this proposal Senator Ball not only seeks extensive revisions in the procedures and administration of the National Labor Relations Act but also would abandon completely the philosophy upon which that act is premised and the purposes which it presently achieves.

Findings and policy

The designs of this bill are readily indicated by the first section which amends the "findings and policy" set forth in section 1 of the present act. Before discussing the changes proposed in section 1 of S. 360, it is well, I think, to point to some self-evident truths. No Congress can, consistent with its primary obligation to the people, simply ignore pertinent, irrefutable facts. To be sure, a finding of fact made by a previous Congress might have been premised upon faulty or inadequate evidence, and in that event it should be discarded. Let us see, then, what factual findings made by the Congress in 1935 are rejected by this proposal and what justification, if any, there is for such rejection.

In 1935 the Congress found that "the denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest." Can anyone, without tongue in cheek, assert that in 1947 that has ceased to be a fact? Of course not. The conclusion is plain and inescapable. The sponsors of this proposal callously brush aside the relevant facts that they find disturbing them.

Definitions

Section 2, among other things, defines the word "supervisor" in a very broad and inclusive manner and excludes any individual supervisor from the definition of the word "employee." The objections to this change have already been set forth in the discussion of the like provision in S. 55.

The definition of "employee" is further changed by providing that a striking worker ceases to be an employee if he has been replaced or has refused an offer for reinstatement. This change would greatly encourage antunion employers to foment strikes by resisting the most reasonable demands for changes in wages, hours, or working conditions. For, the moment such a strike began the employer would offer reinstatement to substantially equivalent employment, which in most cases would, naturally, be refused. Immediately upon such refusal the strikers would cease to be employees, their unions would lose their majority status, and the employer would achieve his objective of being absolved of any obligation further to bargain. Obviously, to cut off collective bargaining during a strike is to cut off the possibility of a speedy and satisfactory resumption of production. It is manifest that the sponsors of S. 360 pay only lip service to the desirability of production. Their real objective is to destroy effective collective bargaining.

Section 2 also adds definitions of the terms "plant" and "professional employees." The significance of these changes will be taken up later.

Separation of functions of NLRB

Sections 3 and 4 radically alter the administrative set-up and procedures of the National Labor Relations Board. Section 3 withdraws all prosecuting and investigating functions from the Board and transfers them to the Department of Justice in a new "Labor Division." Section 4 provides for changes in the manner in which contested cases are to be handled by the Board preparatory to decision. We oppose the adoption of these changes because they are unnecessary, because they will undoubtedly serve to delay decisions, and because they will greatly decrease the possibilities of consent settlements.

There can be no question but that these changes would constitute a revolutionary departure from the basic concepts of the administrative process as adopted and practiced in this country, and we see no reason whatever why the National Labor Relations Board should be singled out for experimentation in this respect. As you know, the American Federation of Labor has, in the past, vigorously criticized and condemned some of the methods and practices of the National Labor Relations Board. However, our criticisms were essentially premised on a biased administration of the act by biased personnel. That condition has since been largely eliminated by the appointment of new Board members who, in our opinion, are now acting in an equitable and fair manner. But even during the worst period we never suggested or supported suggestions for such an extreme revamping of the Board. Moreover—and this is extremely important—the basic defects in administrative procedure have been remedied by the recently passed Administrative Procedure Act, which received the endorsement of the American Federation of Labor, and which, of course, applies to the Board as it does to all other administrative agencies.

One of the most disturbing aspects of the administration of the National Labor Relations Act has been the long delays in getting decisions. Beyond question of doubt, these delays will be infinitely increased under this proposal because, as

doubtless you know, nearly 85 percent of the cases before the Board have been settled without formal action. Plainly, if the prosecuting and investigating functions are completely separated from the judicial functions of the Board, the number of formal decisions will be vastly increased because prosecutors naturally prefer prosecution to settlement. If we have had the experience of large backlogs where only some 15 percent of the cases went to final, formal decisions, how much greater will the backlog be under this proposed division of authority, particularly where, as here, the Board is to be deprived of the service of its review section? We cannot help but feel that the adoption of the major provisions of sections 3 and 4 will impose such an impossible load of work on the Board as to render practically useless its existence.

Unfair practices

Section 5 of S. 360 amends section 8 of the present act in several respects. First, it makes it an unfair practice for a labor organization or its agents to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

The reasons why this type of provision was omitted from the original act, and the reasons why subsequently advanced amendments to the same effect were not adopted, remain equally cogent today. Insofar as this provision may be addressed to unlawful acts like assaults and batteries, they are completely subject to regulation and control by the State authorities, and under our Federal system of Government that is precisely where they belong. The National Labor Relations Act is not and should not be a police measure, and the National Labor Relations Board is not and should not be a police court.

Insofar as this provision is addressed to interference, restraint or coercion accomplished by the exercise of lawful economic pressure, it is indefensible in the extreme. The business of labor organizations is to organize working people, and it is not the business of employers to interfere with such organization. Just as employers engaged in business for profit have every right to employ lawful economic pressures in their relationships, so do labor organizations have every right to employ lawful economic pressures in their organizing activities. To deprive labor unions of that right, as this bill does, is, in effect, to put labor unions out of business.

Section 5 also makes it an unfair practice for a labor organization to refuse to bargain collectively. The implication that the failure of unions to bargain with employers has been so prevalent as to assume the proportions of a national problem requiring national legislation is absurd on its face. The very reason for the existence of American unions is to bargain collectively. Any union policy of refusal to bargain is tantamount to a policy of union suicide. No union can successfully or for long practice a policy of no bargaining. It would lead, inevitably, to its own destruction. The law of self-preservation is far more fundamental and effective than any man-made law.

The only conceivable reason for writing into the law the requirement for unions to bargain is that it may serve as a further means for stalling on the part of the employer. If any strengthening is required of the bargaining obligations under the present act, it is in respect to obligation that employers bargain. The present law merely requires that the employer sit down and discuss a contract in good faith. Instances of dilatory tactics on the part of the employer are exceedingly numerous, because the employer has little to lose. The only recourse of the union is to file charges and eventually—after long and extensive hearings—obtain a directive requiring the employer to bargain. Even then, the order of the Board can be subjected to court review with additional delays of from 1 to 2 years. To avoid this, a specific penalty could well be attached to the refusal of employers to bargain.

Section 5 renders the obligation to bargain collectively even weaker than it is today by providing that the obligation to bargain does not "require the making of a counterproposal." Why not? Why shouldn't there be counter-proposals in the process of collective bargaining? How else can negotiations be honestly carried on? How else can peaceful settlements be hoped for? Collective bargaining, under this new definition, becomes a farcical phrase whereby, unions having made reasonable demands, the employer need only listen attentively, in profound and respectful silence, making no reply whatever. For those employers who under the present act have so far evaded its mandate by cleverly converting collective bargaining into an endless talkfest, the task will become much easier. Under this bill they can force the union spokesman to interminable and boring monologues.

The next change proposed by section 5 would allow employers to state "views or arguments either written or oral, if such statement contains no threat of force or economic reprisal." It will be recalled that the American Federation of Labor has, from the start, insisted upon the right of employers fully to enjoy the freedom of speech guaranteed by the Federal Constitution. In the past we have taken this firm position in litigation and in amendments that we have sponsored. Our position has been fully sustained by the decisions of the Supreme Court of the United States which has given full protection to that employer constitutional right, and the Board has fully complied with the Court's mandates. Moreover, any possible disposition on the part of this Board or any of its successor Boards to abridge that right can, it is safe to assume, be remedied by further court action. It therefore appears excessive at this time to legislate on this question, particularly where it invites the danger of going beyond the constitutional right and actually involving circumstances where force or economic reprisal is involved. That danger grows out of the fact that the suggested amendment may be interpreted to limit only those statements which expressly set forth a threat of force or economic reprisal. In many instances, of course, the occasion of the statement, the past practice of the employer, the inflection of his voice or the gestures he uses, may constitute a threat of force or economic reprisal as effective as any statement that expressly "contains" such a threat.

The final change in section 5 is the elimination of the proviso in section 8 (3) which, under the present law, allows for the closed shop. Our opposition to outlawing the closed shop and our reasons for such opposition have already been voiced in connection with S. 55.

Election of representatives and bargaining units

Section 6 amends section 9 of the present act dealing with "representatives and elections." The first change is additional evidence of the design of this proposal to weaken collective bargaining. Under the present law the individual employee, even where there is a majority collective bargaining representative, has "the right at any time to present grievances" to the employer. Under S. 360, the individual has the right not only to present a grievance, but also "to adjust" it and to do so "without the intervention of a bargaining representative." The necessary and probably intended effect of this proposal is to reduce substantially the value of the union in the eyes of the employees, and to encourage individual bargaining as opposed to collective bargaining. By cleverly granting favorable adjustments where the individual pursues his grievance, and by resisting adjustments where the union does so, the employer can, in time, make it appear that the union is completely unnecessary. It is true that under this proposal the individual may not effect an adjustment that violates the terms of a collective bargaining agreement, but that limitation in no way minimizes the force of the foregoing observations, because the speed and the precise terms of adjustment of many types of grievances are seldom, if ever, set forth in collective agreements. Moreover many adjustments necessarily involve a question of the application, interpretation, or administration of an agreement, as clearly distinguished from a violation thereof, and it is of the first importance that the representative of all the employees who are thereby affected be permitted to participate in such adjustments.

We agree with the general objectives of the proposed revision of section 9 (b) dealing with the appropriate unit, but we believe that some changes should be made. Specifically, while professional employees should if they so desire have the right to be in a unit separate from nonprofessional employees, they should not be forced into separate units against their will. Accordingly, it should be made clear that where a majority of professional employees so elect they may be merged with others.

As to the craft unit, the proposed language is susceptible of an interpretation that the Board may declare the craft unit inappropriate on grounds other than "that a different unit has been established by a prior Board determination." We suggest the need of explicit language making mandatory the establishment of craft units in all cases unless a majority of the craftsmen involved desire otherwise. We recommend that the language of the New York act in respect to craft units be adopted.

Section 9 (c) of the present act is amended in a number of respects. In addition to permitting the filing of petitions by representatives of employees, and by employers in two-union cases, the employer is now permitted to file a petition where only one union is making a claim for representation and any group

of employees is permitted to file a petition asserting that the previously certified or currently recognized representative no longer represents a majority. All petitions are required to be investigated by the new Labor Division in the Justice Department which is required to transmit the petition to the Board if it has reasonable cause to believe that a question of representation exists. Thereafter, the Board is required to hold a hearing in connection with which it must direct an election and certify the results. In determining whether a question of representation has arisen or exists, the Board is required to apply the same regulations and rules of decision, irrespective of the identity of persons filing or the relief sought or the circumstances involved, and employees shall not be denied the right to select a representative because of a Board order which would not have issued under similar circumstances with respect to a nationally affiliated labor organization. The objections to the foregoing changes in section 9 (c) are as follows:

1. To permit groups of employees to file petitions, claiming an existing representative no longer represents a majority, would greatly unsettle existing relationships, would, in practical effect, require an election at the end of each year or at the end of each contract term, and would tend to encourage a decrease in bargaining relationships contrary to a fundamental purpose of the act. It is a simple matter for any employer, exercising his right of free speech, to encourage a return to a nonunion status and obtain a sufficient number of employees to file a petition for what amounts to a decertification. Even if such petitions would not result in loss of bargaining relationships, still the expense, time, and trouble that unions would be put to in conducting yearly election campaigns would cause an unnecessary dissipation of union energies that might otherwise be used for more constructive purposes. Further, industrial turmoil, always incident to an election campaign, would have quite needlessly been brought about.

2. The requirement that the Board must hold elections in each case precludes other heretofore satisfactory methods of determining representatives, as by card check. In requiring that the same regulations and rules of decisions apply to all petitioners in determining whether a question of representation exists, the proposed amendment would abolish present very necessary Board rules permitting different showings of interest under different circumstances. And presumably no greater showing is required for a petition for decertification than would be required for a petition for certification, an obvious departure from the purpose of the act to encourage the collective-bargaining relationships.

3. To permit employer petitions where only one union is seeking to organize has in it possibilities of abuse by permitting the employer to file the petition at a time most advantageous to him in spite of the fact that his right to file is limited to a situation where a demand for bargaining rights has been made. In any event, most reasons for permitting an employer to petition in a one-union case are met by the present Board requirement under the so-called general X-ray doctrine that unions file their petitions within 10 days after having made demands for bargaining rights.

4. The requirement that employees shall not be denied the right to select labor organizations because of an order of the Board against that organization which would not have issued under similar circumstances in respect to a nationally affiliated organization strikes at present Board practice permitting nationally affiliated organizations to appear on a ballot, even though they were the beneficiary of illegal employer assistance, after the effects of such assistance had abated, but not permitting organizations to appear on ballots when such organizations were found to be company-instituted, dominated, and maintained. The proposal would have the Board treat both such organizations in the same manner in respect to the right to petition for certification. Company domination of an organization from its inception certainly casts a deeper stain upon the organization than is the case where a union has merely benefited from some incidental employer assistance, and it is quite reasonable to permit the latter to appear on the ballot after the effects of the assistance have worn off, while requiring complete disestablishment in the former case.

5. Finally, two further changes in Board practice are required under the amendment to section 9 (c) :

(a) No further elections may be held within 1 year following a previous election, even though no representative was chosen. Where a union has won bargaining rights and a collective-bargaining status has been achieved, such a provision is, of course, commendable. However, where an election is lost and no resulting collective-bargaining status has been achieved, it would appear that the present Board practice of permitting another election in a period less

than a year, if adequate additional showing of representation is made, is desirable as a means of accomplishing the prime objective of the act, namely, achievement of collective-bargaining relationships wherever possible. Often elections are lost by very small margins, or untoward circumstances have intervened to prevent employees from enjoying the benefits of collective bargaining. No good purpose is served by forestalling such benefits for the entire additional year if the Board can be reasonably convinced that an election would result in certification of a labor organization for bargaining purposes.

(b) In cases where none of the participating unions receive a majority of votes and the no-union vote does not amount to a majority, the proposed bill requires that the run-off be between the two groups receiving the highest number of votes, even if one is a union vote and the other a nonunion vote. Under present practice, if a majority of the people voting indicate that they desire some union, the Board permits the election to be between the two unions receiving the highest number of votes, and the no-union category is not given a place on the ballot unless that category receives a plurality of the votes cast. Where the bulk of the employees indicate that they want some representation, and where the no-union vote would not amount to a plurality, it would seem that the purpose of the act would best be accomplished by permitting the two unions receiving the highest number of votes to participate in the run-off as is done under present practice.

Section 9 (d) of the present act relating to judicial review of certification proceedings is amended to provide, specifically, that any person aggrieved by the final order of the Board in a representation case can obtain judicial review by an appeal to the circuit court. The appeal must be taken in 10 days, which appeal, however, does not stay any unfair labor practice proceeding then pending unless otherwise ordered by the court. The present act does not permit judicial review of any determination in a representation case, and the act contained this limitation for the purpose of preventing the possibility of undue delays through the taking of successive appeals. If the act is administered in a fair and impartial manner, it would appear that any good accomplished by providing for judicial review in representation cases would be far outweighed by the harm resulting through the possibility of delay in obtaining the collective-bargaining relationship. However, even in that case, determinations respecting an appropriate unit often can mean the life or death of a petitioning union, and so it might be well to provide for review in representation cases involving certain specified determinations, as for instance, the establishment of an industrial unit as against a craft unit, the establishment of an area unit as against a plant unit, etc. However, under no circumstances should an employer or anyone on his behalf be allowed a direct appeal in R cases, since he now has an adequate remedy under section 10 and the additional appeal would be used for purposes of delay.

Enforcement of the act

Section 10 of the present act relating to enforcement of section 8 is amended in several respects, the most important of which are the requirement that charges be filed within 6 months after the occurrence of the unfair labor practice and the requirement that the Board not fashion any remedy for violations that apply only to unaffiliated labor organizations. This latter provision might operate to prevent disestablishment of company unions under section 8 (2) of the Board would not disestablish affiliated unions under similar circumstances, but as pointed out before, the circumstances in respect to an affiliated and an unaffiliated union are rarely, if ever, the same in respect to company domination.

Section 10 (e) is amended in an important respect by requiring that the Board's findings be supported by "the weight of the evidence." The Administrative Procedure Act has already prescribed specific rules as to the weight of evidence necessary to support administrative findings, and it is clear that the attempt to add an additional qualification as set forth under the proposed amendment would merely invite the court to substitute its own inexperienced findings for the expert findings of the Board. Moreover it unnecessarily encourages appeal litigation and hence further delays.

Sections 11 and 12 of the present act are amended in several rather inconsequential ways. Since the procedure under those sections has been found eminently satisfactory, there is now no good reason for proposing changes.

The right to strike

The provisions of section 10 of S. 360 and their underlying philosophy should be condemned by every citizen in this country to whom the essence of American-

ism is meaningful. That may, at first blush, sound like an extreme partisan statement, but I am convinced that when you carefully think upon and carefully analyze those provisions you will agree with me that seldom if ever has there been any proposal for legislation that is so profoundly subversive of the concepts and attributes of freedom of action and self-reliance which have made this country great. What we have here is paternalistic statism, of the most obvious and dangerous kind. It is provided that a strike to compel an employer to bargain with any organization or person not "certified as the representative of his employees under section 9" is an unlawful strike. This goes even beyond the intolerable restriction in S. 55 against strikes by minority unions. This prohibits a strike for wages on the part of a majority union unless that union has first received the formal nod of Government approval in the form of a certificate issued by some Government agency. No matter how unquestioned the majority status of that union, no matter that everyone including the employer knows and acknowledges that all of the employees involved are members of a union and desire to be represented by it, no matter how long a satisfactory bargaining relationship has been in existence, it would still be necessary under this provision for that union to request the Government to issue a formal governmental document certifying the existence of a fact that no one has ever doubted before it may lawfully strike in furtherance of the most reasonable demand for a slight increase in wages.

Nor is that all. Section 10 also provides that no union, even one that has already been certified by the Government, may strike "to compel an employer to remedy practices for which an administrative remedy is available under this Act." Consider what this means. An employer may deliberately pursue an offensive course of action in willful violation of this very law with the express design of smashing the union and depriving this employees of their elemental rights and the union must patiently and politely sit back and do nothing in self-defense except invoke what is at best the cumbersome machinery of government for aid and support. I pass over the obvious fact that in most, if not all, cases such an employer would have fully and irreparably accomplished his destructive aims long before the Board and the reviewing courts could take any final, remedial action. My essential point is that it will be a sorry day for this country if and when it adopts and enforces a philosophy that individuals or groups, be they workers, employers, farmers, or anything else, may not meet their problems by resorting to their own lawful and peaceful devices, but rather, are compelled to become dependent supplicants to an all-wise, all-providing, all-embracing Government bureau.

In final irony section 10 provides "except as specifically provided in this section, nothing in this Act shall be construed to diminish the right of employees to strike or engage in other lawful concerted activities." It is as though some thief having robbed his victim of every valuable possession would sanctimoniously soothe him by saying, "You may thoroughly enjoy what I have left you."

I cannot conceive that this committee or this Congress will give any serious attention to obnoxious proposals of this kind.

S. 133. INDUSTRY-WIDE BARGAINING

S. 133 seeks to destroy all attempts by a single union representing employees in any particular trade or industry to eliminate, through the collective-bargaining process, nonunion wage competition throughout geographic areas, be they regional or national, if the areas extend beyond 100 miles. In addition, it seeks to prevent such attempts to protect and maintain wage standards by agreement between two labor organizations in the same industry even though this agreement be on a strictly local basis and within the above-mentioned hundred-mile area. Thus, the necessary protection cannot be obtained either by a single agreement embracing all employees who might engage in wage competition, or by agreement between union members, as by provisions contained in union constitutions or bylaws that no member or affiliate shall agree to or accept compensation below a stated minimum. A more retrogressive proposal could hardly be imagined. It treats the labor of human beings as though it were a commodity. Over 30 years ago the Congress declared that "The labor of a human being is not an article or commodity of commerce." That, of course, is just as true today. The bill seeks by legislative fiat to stem the whole evolution of the trade-union movement. It indicates a profound ignorance of the basic philosophy under which that movement has grown and progressed in all nations where it has remained free, namely, the philosophy that the economic interest of all engaged in a trade or industry is interdependent, and the working conditions of each affect the conditions of

all, so that organization, to be effective, must extend over as wide an area as possible. Thus, in the Scandinavian countries, in Australia and New Zealand and in England, where the trade-union movement has reached maturity, collective bargaining has extended almost universally to an entire craft or trade or industry. The result in those countries has been an eminently satisfactory management relationship. In this country, the most significant achievement of industry-wide bargaining has been in the garment industry where, beginning among conditions so disgraceful as to give rise to the very term "sweatshop," there has evolved an industry-wide relationship, through industry-wide bargaining, which can serve as an example for the world. In addition, Nation-wide agreements in the stove industry, in the soil-pipe industry, in the railroad industry and others, area agreements in the shipping and shipbuilding industry, in the trucking industry, and in many others have contributed immeasurably to industrial stability.

That is not only natural but inevitable for trade-unions to seek to extend organization and the benefits of bargaining over as wide an area as possible has been recognized time and time again, not only by leading economists but by the Supreme Court of the United State. As far back as 1919, Chief Justice Taft, speaking for all but one of the then Justices, stated in respect to combinations of workers for their mutual aid and protection as follows:

"To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because, in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership, and especially among those whose labor at lower wages will injure their whole guild" (*American Steel Foundries v. Tri-City Council*, 257 U. S. 184, at 209).

Since then ease of transportation and integration of industries have made the labor market far more regional and national in scope. It has become the prime function of any national organization to seek to maintain protections and to extend benefits through entire areas or through entire industries. Such expansion through a national labor organization arose, as did the very principle of self-organization, out of the necessities of the situation, for unless nonunion wage competition was eliminated, organization and bargaining in particular plants or in particular local areas could be made entirely ineffective. This was recognized by the Supreme Court, speaking through Justice Stone, in the *Apex Hosiery Co.* case, when it stated:

"Since, in order to render a labor combination effective it must eliminate the competition from non-union-made goods * * * an elimination of price competition based on differences in labor standards is the objective of any national labor organization" (*Apex Hosiery Co. v. Leader et al.*, 310 U. S. 469, at 503).

The necessity for maintaining comparable conditions throughout an entire region was again recognized by the Supreme Court in the *Thornhill* case where it eloquently and accurately stated:

"The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern" (*Thornhill v. Alabama*, 310 U. S. 88, at 103).

And finally in the *Swing* case, the entire Court agreed that—

"The interdependence of economic interest of all engaged in the same industry has become a commonplace." (*American Federation of Labor v. Swing*, 312 U. S. 321, at 326).

Are these plain economic facts to be ignored? Are the basic interests of workers to be disregarded and the evolutionary trend of trade-unionism to be diverted?

The bill has another very serious implication in that it would have the effect of destroying the usefulness of, and indeed the necessity for, national labor organizations whose prime purpose is to facilitate the spread and maintenance of union conditions over as wide an area as possible. National unions, except those organized on a single-company basis, simply could not function to any practical end, and local unions, helpless on their own to protect against onslaughts of cutthroat wage competition, would themselves become ineffective. Industry-wide wage stabilization would come to an end, living standards throughout the country would be depressed, collective bargaining would have no real meaning because it would be ineffective, and the slogan of "Equal pay for equal work"

would become an empty one because impossible of realization. Industrial chaos and a depression in living standards can be the only result of the passage of S. 133.

SENATE JOINT RESOLUTION 8. COMPULSORY INCORPORATION

Legislation requiring compulsory incorporation of unions, such as is now proposed in Senate Joint Resolution 8 by Senator Byrd, is objectionable on many grounds. To begin with, it necessarily involves the licensing of fundamental rights of assembly, petition, and speech inherent in any labor organization. If a State can require incorporation, it can refuse incorporation and it can extend its visitatorial powers to every branch of the internal operation of unions. History affords an excellent example of what will result from compulsory incorporation of unions. In Fascist Italy, one of the first steps of the dictator was to require unions to incorporate along with every other social and economic institution.

The grossly discriminatory feature of compulsory incorporation of unions is readily seen from the fact that even business organizations are not required by law to incorporate but are free to choose such form of existence as is deemed suited to their purposes. In this respect, compulsory incorporation of enterprises for profit would have a much sounder and more logical basis than the compulsory incorporation of unions, because the corporate form was originated and developed specifically to meet certain business needs, notably limitations on risk as a means of attracting capital to profit-making enterprises. Labor organizations are not businesses operating for profit, seeking the investment of capital, and avoidance of risk for that capital. They are organizations of people joined together for purposes of mutual aid and protection, and, as such, the concept and function of incorporations is entirely foreign to their purposes. Furthermore, a labor union is not something which can spring up full blown as a corporation. The development of most unions is a slow process, beginning with private meetings of two or three individuals and gradually expanding to cover a plant or craft. Those who advocate compulsory incorporation can aptly be asked at what stage in the formation of unions are they to obtain corporate charters, corporate seals, and distribute or sell the stock?

A final and very important objection to any compulsory incorporation of labor organizations—an objection applicable to any type of nonprofit voluntary association—is that such incorporation entirely ignores, indeed subverts, the fraternal aspects of a union. A union is much like a club or lodge in many respects; members address each other by the name of brother; and a general feeling of camaraderie and fraternity exists and is encouraged. Is Congress to substitute for this the formal relationships of a corporation so that the members hereafter will be required to address each other as "Brother Stockholder"?

Senator Byrd's proposal also requires labor organizations to register with the Securities Exchange Commission and to provide that Commission with detailed, specified information. We have already commented on registration in connection with S. 55.

CONCLUSION

The large number of proposals now before this committee are ill-considered in the extreme. I say with full conviction and full sincerity that their enactment would produce such great industrial confusion as to seriously undermine the present world position of the United States. They are premised on an assumption that is entirely without merit, namely, that our problems in labor-management relations stem from alleged excesses in the practices of trade-unions. The truth is, of course, that most, if not all, of those problems result from basic new forces that have developed under the changed circumstances of the past 15 years—such as our expanded economy and our great advancement in machine production with resulting manpower displacement; the dislocations and adjustments caused by the depression; the war and the postwar period; and the emergence of certain economic and social truths.

It necessarily follows that the indispensable first step that we must take, if we can hope to cope with those problems in an intelligent and effective manner, is to acquire a complete knowledge and understanding of those basic forces and of those new circumstances. The American Federation of Labor is prepared to cooperate with this or any other competent committee in making such a study.

Senator BALL. The committee will recess until 2 p. m.

(Whereupon, at 12:50 p. m., the committee recessed until 2 p. m.)

AFTERNOON SESSION

(The hearing was resumed at 2 p. m., pursuant to the noon recess.)

The CHAIRMAN. The committee will come to order. Our first witness this afternoon is Mr. Harry Stevenson, international president, International Molders and Foundry Workers Union of North America, American Federation of Labor. You may proceed with your statement, Mr. Stevenson.

**STATEMENT OF HARRY STEVENSON, INTERNATIONAL PRESIDENT,
INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF
NORTH AMERICA, AMERICAN FEDERATION OF LABOR**

Mr. STEVENSON. Members of the Senate Labor Committee, I am Harry Stevenson, and I am the international president of the International Molders and Foundry Workers Union of North America, which is affiliated with the American Federation of Labor. I have been president of that union for approximately 10 years.

The International Molders and Foundry Workers Union of North America is vigorously opposed to those bills now under consideration by this committee which are designed to limit and restrict organized labor in carrying on its necessary functions which are now and which for the past half century have been considered proper and lawful.

I will not discuss and analyze in detail the individual bills pending before the committee. That has been done in a comprehensive and proficient statement made by President Green, of the American Federation of Labor.

I fully and earnestly subscribe to that statement and it would serve no purpose for me to repeat President Green's opinions. I will limit my discussion to those bills which would make collective bargaining on an industry-wide basis unlawful and which would abolish the closed shop. Those two legislative proposals are of immediate and direct concern to the Foundry Workers Union and I would like to discuss these bills from the particular viewpoint of the Foundry Workers Union.

S. 133 is designed to make collective bargaining on an industry-wide basis unlawful and restrict bargaining units to plants located within areas of no greater than 100 miles in width.

This type of legislation, if enacted into law, will not alleviate but will contribute to industrial strife by terminating established collective-bargaining procedures, and throwing into utter confusion the most satisfactory and stable labor relations in the country.

The Foundry Workers Union knows whereof it speaks in this regard, for it holds the distinction of being the oldest international labor organization in the United States, having existed and flourished since 1859, and it has had greater experience in collective bargaining on both the industry-wide and the individual plant unit basis than any other labor organization, group, or industry in this country. As the international president I have studied and have full knowledge of the experiences of our organization in collective bargaining.

It has been the experience of our organization that industry-wide collective bargaining greatly lessens industrial strife and contributes materially to peaceful and mutually beneficial labor relations.

The Foundry Workers Union is exceedingly and justly proud of its record of bargaining on the industry-wide unit basis and looks with apprehensive misgiving upon proposed legislation which would mandatorily terminate that form of collective bargaining and would require a return to bargaining on an individual plant-unit basis.

Legislation blindly brushing aside all bargaining on an industrial unit basis would destroy the most exemplary and ideal labor relations that have ever existed in the history of labor. In support of this statement I want to call the committee's attention directly to the relationship that has existed between the Foundry Workers Union and the stove manufacturers of this country. The history of that relationship alone is positive proof that the abolition of industry-wide bargaining would prove a great detriment to industrial relations.

That relationship dates back to the year 1891. Prior to that time the stove industry of this country was marked with bitter labor strife. Production was hampered constantly by strikes and lock-outs. In order to find a solution to the continuous labor turmoil which plagued the industry, the stove manufacturers formed themselves into an association then known as the Stove Foundries' National Defense Association, now called the Manufacturers' Protective and Development Association.

Representatives of this association met with representatives of the Foundry Workers Union to discuss the problems of labor relations in the industry. As a result of this conference, a resolution was adopted, and I quote:

Whereas there has heretofore existed a sentiment that the members of the Stove Founder's National Defense Association and the members of the Iron Moulders' Union of North America were necessarily enemies, and in consequence a mutual dislike and distrust of each other and of their respective organizations has arisen, provoking and stimulating strife and ill-will, resulting in severe pecuniary loss to both parties; now this conference is held for the purpose of cultivating a more intimate knowledge of each other's persons, methods, aims and objects, believing that thereby friendly regard and respect may be engendered, and such agreements reached as will dispel all inimical sentiments, prevent further strife, and promote the material and moral interests of all parties concerned.

Since that time, representatives of the association and of the union have annually sat at the bargaining table, ironed out their differences and negotiated agreements.

The result—56 years of uninterrupted negotiations and agreements without a strike.

This is the oldest continuous trade agreement in the history of the world, and the Foundry Workers Union rightfully boasts of this accomplishment. The workers in the industry have received tremendous advances in wages and continuous improvements in working conditions over the years. The present wages and conditions in the industry are comparable to any wages or conditions in any industry in the country.

This has been accomplished without the loss of a single day's pay from strike action. The industry has also benefited as it has been able to progress with confidence in the stability of its labor relations. And the public has benefited from the constant supply of the products of the industry.

Certainly no proponent of labor legislation can contend that discouraging such relationships as exist in this industry by banning all

collective bargaining on the industry-wide basis would contribute to labor peace.

Were this the only incident which has proven the feasibility and desirability of bargaining on the industrial-unit basis, it should suffice to demonstrate that collective bargaining on an industry-wide basis should be encouraged, not banned, in the interest of smooth labor relations; but this is not the only industry-wide agreement enjoyed by the foundry workers. Many others exist to which the Foundry Workers Union is a party which have alleviated, if not all but eliminated, labor strife in the particular industry which has adopted such bargaining practices.

In 1932, the soil-pipe manufacturers of the South, finding their industry burdened with labor strife, formed a negotiating committee for the purpose of bargaining collectively with the Foundry Workers Union. The results were highly satisfactory to both the industry and the workers.

Much of the labor strife in those dark years of depression resulted from employers in the industry resorting to the exploitation of the worker to obtain a competitive advantage. The only answer in the industry was for each employer, whether he desired to do so or not, to meet or better the wage cuts of his competitors, or to eliminate from the industry entirely this ugly practice. The latter course was followed and the disparity in wage rates was wiped out through industry-wide bargaining. Ideal conditions have prevailed since then.

The manufacturers of soil pipe in the North likewise formed a negotiating committee to bargain collectively with the Foundry Workers Union on behalf of the soil-pipe manufacturers located in that section of the country. In December of 1946, the Foundry Workers Union succeeded in holding joint negotiations with the negotiating committees of the soil-pipe industry of the North and of the South, with the result that in January of this year a collective-bargaining agreement became effective covering more than 95 percent of the entire soil-pipe industry of this country. Thus labor relations in this entire industry have been stabilized and the Foundry Workers Union looks forward to many years of beneficial labor relations in the industry.

Throughout the entire country, the Foundry Workers Union has found it advantageous to both industry and to workers to bargain on the industry-wide basis wherever possible, either for an entire industry or in a particular labor market.

In each instance the expansion of the bargaining unit to encompass an entire industry or to encompass a multiple-employer group covering a particular labor market, regardless of the geographic expanse of that market, has materially aided in the elimination of industrial strife.

In collective bargaining on an industry-wide basis the labor problems of the entire industry are before the negotiators. They are, thus, in an advantageous position to meet those problems and to work out solutions for those problems. In negotiating with the individual company, no comprehensive study or discussion of the particular problems of the industry is possible. The parties negotiate in ignorance and it is ignorance for the most part that is the basic contributing factor in disharmonious labor relations.

I submit that consideration of the history of the collective bargaining carried on by our organization on the basis of industry-wide units will make crystal clear that the elimination of industry-wide bargaining is not in any way an answer to industrial strife and will not contribute to labor peace.

Surely the wiping out of such historic agreements as that which exists between the molders union and the Manufacturers' Protective & Development Association will contribute nothing to labor peace and will substitute confusion and chaos in that industry just as it will substitute confusion and chaos in all industries where industry-wide bargaining has become the accepted practice.

There have been several unfortunate strikes in the past several years in certain basic industries where it so happened bargaining was conducted on the industry-wide basis. But this does not mean that the cause of the strife was the type of bargaining unit employed in the negotiations. True, because the strike affected a substantial portion of the industry, the largest source of supply of the product or the means of transportation was cut off.

But a series of strikes over a period of time could bring as much, if not more, disruption in industry and transportation and a more drastic curtailment of the products of industry. This would be not only a possibility but a probability for employers, bargaining on the individual basis, would be reluctant to enter into contracts for fear competitors might obtain more favorable contracts. Employers would be bargaining in ignorance of the labor conditions and wages to prevail in other portions of the industry and this would not encourage the consummation of agreements.

There is now pending before Congress a joint resolution, Senate Joint Resolution No. 22, designed to bring about a full study of the causes of industrial difficulties. The Foundry Workers Union urges the adoption of that resolution, and urges a full study of the problems in labor relations, for it is only in that manner that the causes of labor strife can be ascertained and dealt with and labor peace brought to this land.

Surely, labor peace cannot be obtained by eliminating the type and manner of bargaining that has proven most successful in accomplishing stable labor relations.

The CHAIRMAN. Mr. Stevenson, may I interrupt?

Mr. STEVENSON. Yes.

The CHAIRMAN. Will you tell me just how your operation works? Do you make a contract once a year with the manufacturers association?

Mr. STEVENSON. Yes.

The CHAIRMAN. And, does that contract cover all the details, or only certain features?

Mr. STEVENSON. It covers all details.

The CHAIRMAN. That is, I have reference to working conditions in the different shops.

Mr. STEVENSON. I might explain it this way. The stove industry is a piece-work industry. We will assume that a new stove is put in from the foundry. All the parts are new.

Well, they have to be priced to enable the molders and the other workers on that stove to determine what we would say is a fair wage

rate. These are then taken up between the foreman and the committee of the men.

Now, if that committee cannot settle it, they then take it to the general manager of the firm. The men keep on working in the company on that new stove, on a temporary price on the job.

If they cannot settle it, they refer it to these two associations. They have a meeting, they meet with the association, say a vice president meets in some plant, like that very large plant that you are familiar with, Senator, in Ohio.

I will go all through it to let you know just how it works, if you want.

The CHAIRMAN. Yes.

Mr. STEVENSON. If they are unable to settle it, then it is referred to the two presidents—that is, to myself and the president of the organization. If they cannot agree and settle it, it is referred to a subcommittee of three from each side.

That subcommittee meets and sets the price of that job, and that is final and binding on the workers. If it is an increase on the prices, then he gets the pay retroactively from the time he starts the job that he is working along with.

The CHAIRMAN. Have you a copy of one of the contracts?

Mr. STEVENSON. Yes; I have.

The CHAIRMAN. Will you pass me one, sir?

Mr. STEVENSON. Yes. [Complies.]

The CHAIRMAN. Is the international the bargaining agent for each of the local unions?

Mr. STEVENSON. Oh, yes, yes.

The CHAIRMAN. It is the bargaining agent?

Mr. STEVENSON. Sure, for those members, those who are members of the association. I might say that there are very large numbers of stove manufacturers who are not members of that association.

However, whatever is agreed to in conference with this association, these individual foundries put into effect. In other words, they carry out the conference agreement. In fact, these conference agreements even apply to the stove foundries in Canada, they go along with that agreement there, the conference agreement, Senator.

The CHAIRMAN. Well, do you cover practically all of the questions or do you leave some of the details to be settled out between the company and the local union?

Mr. STEVENSON. Yes.

The CHAIRMAN. I mean, such questions as working conditions, and so forth.

Mr. STEVENSON. Yes.

The CHAIRMAN. Grievances are handled locally?

Mr. STEVENSON. Yes, sure; and if they cannot adjust it, then it comes finally to the subcommittee.

The CHAIRMAN. Is there any supplemental contract between local unions and particular manufacturers; that is, contracts besides these general conference agreements?

Mr. STEVENSON. The independent foundries—

The CHAIRMAN. No; I mean members of this association.

Mr. STEVENSON. The members of this association—no. This one contract covers all.

The CHAIRMAN. The one contract covers the details of the whole business?

Mr. STEVENSON. Yes. We meet in Chicago in the month of December, and we do it then. The country is split up into nine districts. There are three officers, myself and two vice presidents. We meet in Chicago.

The CHAIRMAN. Yes.

Mr. STEVENSON. We have the men working in the stove shops elect from each one of those districts a man, and they all come into Chicago and meet with us.

So, we sit down and finally we go into a subcommittee and when we are finally through, we vote on that, and it is always unanimous, when we finally get through.

So, the agreement is settled in Chicago for the following year, without it having to go back to the local unions at all.

The CHAIRMAN. Is there any differential provided at all for different regions of the country?

Mr. STEVENSON. No. These are minimum rates. You will see them there, from Portland, Maine, to California.

The CHAIRMAN. Yes.

Mr. STEVENSON. Those are minimum rates. If any employer wants to pay above that, why, nobody is going to try to stop him from paying over that minimum.

The CHAIRMAN. Any other questions?

Senator ELLENDER. I want to ask a question.

Mr. STEVENSON. Shoot.

Senator ELLENDER. You say that most of this work is piecework?

Mr. STEVENSON. Yes.

Senator ELLENDER. Then, the amount to be paid for each piece for a stove is fixed?

Mr. STEVENSON. Yes, sir; sure.

Senator ELLENDER. Now, what percentage of your employees has its work reduced below the minimum number of pieces?

Mr. STEVENSON. I see what you mean to get at. I don't believe there are any pieceworkers who get or make less than the minimum.

Senator ELLENDER. None get less than minimum?

Mr. STEVENSON. Right.

Senator ELLENDER. Isn't it rather difficult to make it come out that way?

Mr. STEVENSON. Oh. Well, we have been negotiating these here agreements for 57 years, and we have worked it all out by now.

Senator ELLENDER. I still do not see—

Mr. STEVENSON (interposing). In other words, if we find a job that a fellow is working on and he isn't able to get the minimum, we fix that. We always believe that the pieceworker is entitled to above 20 percent over the daily for the others, that is for the extra effort he has to put in.

Then, suppose we find somewhere in a job where a fellow don't make that minimum.

Senator ELLENDER. That is what I am inquiring about. What is done then?

Mr. STEVENSON. Then, we say, "Now, there's something which is wrong here." We figure something is wrong in the settlement on that price there, that probably a mistake has been made.

Well, the result is that we get together on that, and the employer says, "All right, we will correct that." We figure there is something wrong when a fellow don't make his minimum.

Senator ELLENDER. You say you correct it. Well, does that condition remain during the life of the contract, before it is corrected?

Mr. STEVENSON. No; they can do that in between times, if they find a mistake has been made.

Senator ELLENDER. All right.

Mr. STEVENSON. We say it would not be right to wait a year before fixing it up. If the mistake had been made in December and we found it out in January, we don't make those things wait until the coming December, a whole year, just about. We correct them. They iron it out themselves, that is.

As a matter of fact, I think some members of this association are going to appear before this committee, sometime later, and I am sure that they will practically bear out any statement I am making to you about that.

Senator ELLENDER. With regard to your closed-shop agreement, is anything done about that with the local people? Is any specific agreement presented to the local, or mother union?

Mr. STEVENSON. Well, on the agreement itself, we have enough of them printed to give all the members some, the members working in these shops.

Senator ELLENDER. I know; but is it submitted to them in advance?

Mr. STEVENSON. No; it is not drafted in advance.

Senator ELLENDER. But they always agree to the contract?

Mr. STEVENSON. Yes. We do that in conference.

Senator ELLENDER. Is it then submitted to the local union?

Mr. STEVENSON. No. No; it is settled right in that conference by a majority vote. I thought I had told you all about that.

Senator ELLENDER. What I am trying to find out now is how much the local union has to say about it.

Mr. STEVENSON. All right. I will tell you. I told you before that the country is split up into nine districts. The men in the shops, before that conference, they select someone that is working in one of the shops, one of the workers, to come to that conference and represent them.

Senator ELLENDER. And he has full power to represent his district?

Mr. STEVENSON. Yes. And he brings in all kinds of resolutions and everything else with him, which we go over and that is the way we have been negotiating. We have been doing it this way for 57 years.

Senator ELLENDER. All right.

Senator THOMAS. How large is the union?

Mr. STEVENSON. We have got over 100,000 members.

Senator THOMAS. And, how broad is the scope of the activities, the classes of work? You mentioned stoves almost entirely.

Mr. STEVENSON. Well, I was going to deal with that as I come along to it.

Senator THOMAS. Over 100,000; and, I suppose, you have men in practically every State in the Union.

Mr. STEVENSON. Oh, yes. Yes; all the way from Portland, Maine, to California. We practically control that industry, except in the automobiles and in steel, where they have, in their industries, foundries handled not by us.

Senator ELLENDER. I suppose you have rules and regulations governing the members of each local union, don't you?

Mr. STEVENSON. Here is our constitution, if you would like to have it. (Exhibiting booklets.)

Senator ELLENDER. What I mean is that your rules and regulations govern the procedure against anyone who violates those rules and regulations.

Mr. STEVENSON. Yes.

Senator ELLENDER. How do you proceed against such violators?

Mr. STEVENSON. This little book here—

Senator ELLENDER. No; I am asking you for the information, I do not have time to read that book.

Mr. STEVENSON. All right. If he violates any of the rules, they can bring him up on charges in the local union. And, they have to appoint a committee and make a full investigation. Then, the committee has to report back to the local union.

Then, by a secret ballot, the members of that local union vote as to whether he is guilty or not guilty. If they find him guilty, they must send a synopsis of the trial to me, as the international president, to approve, and I approve that before it finally becomes—

Senator ELLENDER. Effective?

Mr. STEVENSON. Effective in the local union.

Senator ELLENDER. Now, what if they find him guilty; what is the punishment, as a rule?

Mr. STEVENSON. Fine or expulsion.

Senator ELLENDER. He is thrown out?

Mr. STEVENSON. Yes; if we find that he has committed some offense that warrants that.

Senator ELLENDER. Would that prevent him from getting work? In other words, would he be able to get any employment in that industry?

Mr. STEVENSON. You mean in that shop?

Senator ELLENDER. Well, in that shop, then. What happens there?

Mr. STEVENSON. In that shop, he can't, in that plant. It is possible he may pay it off by a fine.

Senator ELLENDER. After expulsion?

Mr. STEVENSON. Even though we expel him, we make provisions whereby he can again make application for membership and the fine is not so large. I will have to give you one of these, it's in here (exhibiting constitution).

Even after he is expelled, it states in here, he can pay his \$50 fine and come back in the organization. Any more questions?

The CHAIRMAN. You may proceed.

Mr. STEVENSON. In considering legislation to abolish the closed shop, realities must be the dominant factor. Legislation to abolish the closed shop completely ignores realities and stems entirely from a false premise and fanciful theories.

The CHAIRMAN. Senator Ball will preside in my absence. I shall leave now.

Mr. STEVENSON. Such legislation presumes that the vast majority of workers have no desire for union membership and bitterly resent compulsory membership in a labor organization as a condition of employment. Nothing could be further from the truth.

The contrary is the true fact. The great majority of employees desire unionization and demand that all employees who share in the benefits of their union contribute to its support. Especially is this true in regard to workers in industries that have long been organized. The foundry industry, and the relationship of the workers in that industry to the Foundry Workers Union, is the most perfect example.

The Foundry Workers Union, the oldest labor organization in this country, was organized among the journeymen molders in Philadelphia, Pa., in the year 1859, and has enjoyed a continuous and progressive growth since its founding. It became affiliated with the American Federation of Labor when that great organization was formed, and it has maintained its affiliation with the American Federation of Labor ever since.

Senator THOMAS. May I break in right there?

Mr. STEVENSON. Sure.

Senator THOMAS. Back in those days you speak of, 56 or 57 years ago, when you did have strife and labor difficulties, did you have any strikes over the closed-shop question?

Mr. STEVENSON. Yes. Yes, we did.

Senator THOMAS. Did you have any strikes over any of these questions that we are dealing with now? I realize, of course, you did not have Nation-wide bargaining in the beginning, or things of that kind; but weren't there strikes?

I do not want to ask a leading question—well, I will. Your strikes then dealt with working conditions almost entirely, did they not?

Mr. STEVENSON. Mostly, yes.

Senator THOMAS. They were strikes to raise wages, and to better working conditions, would you say?

Mr. STEVENSON. Yes. For instance, some place to wash up in after the job was done, instead of going home to wash up; and everything else like that—trying to make and get better conditions.

Senator THOMAS. In other words, your strikes were over correcting working conditions and over grievances?

Mr. STEVENSON. Yes.

Senator THOMAS. Do you remember any closed-shop strikes you have had?

Mr. STEVENSON. No; I wouldn't say that there were any called for that purpose. Sometimes, the men themselves used to handle that. What I mean, if some molder came in and he did not belong to the union and he absolutely refused to join up and belong to the union, they would go to the boss. They would say to the boss, "Well, we feel this way, he either don't work or we don't work."

Then, they would probably take a day off and the employer, as a general rule, let that molder out that would not belong to the union.

Now, the initiation fee into our union is not a large one.

Senator THOMAS. How much is it?

Mr. STEVENSON. It has always been the same. It's not a very large fee, \$5 for journeymen all over the United States and Canada, and that is what it has been since 1859.

Senator ELLENDER. What is it monthly, do you know?

Mr. STEVENSON. How's that?

Senator ELLENDER. How much does it amount to monthly?

Mr. STEVENSON. Oh, you mean the dues.

Senator ELLENDER. Yes.

Mr. STEVENSON. I am talking about it from initiation; initiation fee, \$5.

Senator ELLENDER. I see.

Mr. STEVENSON. The monthly dues: \$3.25 for the journeymen, what we call molders and core makers. Of course, we pay more, we pay strike benefits and there is the sick benefits and the death benefits in it, too.

Senator ELLENDER. What do they amount to?

Mr. STEVENSON. Sick benefits, \$5.75 a week for 8 weeks.

Senator ELLENDER. Who controls the number of people to be employed in a particular factory?

Mr. STEVENSON. The employer.

Senator ELLENDER. And then you—that is, the union—furnishes the people?

Mr. STEVENSON. Yes.

Senator ELLENDER. And they have to belong to the union?

Mr. STEVENSON. Well, wherever they have the closed shop, yes.

Senator THOMAS. I gather, then, that the closed shop is not a uniform condition.

Mr. STEVENSON. Well, we have places where they have maintenance of membership, and so forth, in some places which have been organized in the last few years, places where they have not been accustomed to union agreements, and we let them go ahead with the maintenance; and finally they come to the closed shop, anyway.

Senator THOMAS. They come to the closed shop?

Mr. STEVENSON. Yes; because the other does not work. I went to work in a foundry in 1898, at the time of the Spanish-American War. I worked in an open shop, and I saw what it was. The fellows who did not belong to the union, why, nobody talked with them, nobody wanted to have nothing to do with them—and it interfered with production.

I saw that. I worked in the foundries for a good many years. And I also know something about the very bad labor laws that we had. I would like to mention, with your permission, on account of this labor legislation you are having here, an incident that happened to myself when I was out in a strike—not for a closed shop—in the year 1917.

Senator BALL. Go ahead, sir.

Mr. STEVENSON. This was down in Newark, N. J., which was formerly my home. All the foundries agreed to pay 25 cents more a day. Twenty-five cents a day used to be a lot of money in those days. All agreed; that is, all except one large foundry, and we had to strike because of what the other foundries had done.

The result is, the firm got a restraining order against us, stopping us from picketing, with me being chairman of this strike committee.

Now, in those days, they could get these restraining orders by just getting the signatures of these nonunion men brought in from different States—strikebreakers. They would say we had insulted them, or almost anything else, and they would get these restraining orders.

The result was that I was brought into the Chancery Court of New Jersey, right in Newark, and was charged for contempt or something that happened when I was 3 miles away, and I was sent to jail for

40 days by a vice chancellor that was found guilty, a few weeks afterward, of bigamy—but they didn't send him to jail.

And, he told me, he said, "Mr. Stevenson, don't forget this, I am the only one who can let you out." However, after serving 19 days, I was let out because it was near election and I was on the election board. By the way, I was a Republican at that time [laughter], and they let me out a couple days before the election date.

Now, it is things like that that went on down in the years gone by I just mention this; you can check this up, it is in the record at the court of chancery. They still got 21 days more on me, you know, that they could send me back, to serve the other 21 days, sometime; they told me those injunctions held forever and forever once they put them out.

However, it is on account of laws such as that that the workers of this country wanted to do some thinking for themselves. They didn't vote Republican just because their father was a Republican, and the same with the Democratic ones. They started to do a little thinking for themselves. And they went along and they progressed along those lines, and they did this thinking on their own accounts.

Now, with all those laws here, with all this labor legislation that is before this committee, I am fearful. And, we realize the wonderful record that labor made in production during this World War. Labor has been commended by everybody.

Now the war is over, they are coming after us the way they did in 1919 and 1921, to reduce wages, and then again in 1931 and 1932. You know what happened over that period of years, gentlemen.

I believe it will be a serious mistake to try to enact some of this drastic labor legislation, particularly on this industry-wide agreement. There we have been working for 57 years, from Portland, Maine, to California, and somebody wants to break that up.

Senator ELLENDER. Mr. Stevenson, if all the unions in the past had been managed in the way you describe yours we would not all be here trying to change the laws. John L. Lewis and the like are the ones that have caused a lot of this trouble, you know.

Mr. STEVENSON. Well, are we going to be made to suffer for that?

Senator ELLENDER. No; we are not going to have you suffer when a bad condition can be corrected. In fact, I can tell you I am not going to make you suffer.

Mr. STEVENSON. I am glad to hear that, Senator. I am glad to hear that.

Senator ELLENDER. However, there is no excuse for allowing a labor union to exist with as much power in its hands as the Government itself. I am sure you agree with me that the entire coal industry, and our economy, through coal, should not be allowed to become tied up because of the power held by one man.

Do you think a man like John L. Lewis or any other should have enough power to put great masses of people out of work? Don't you agree with me that he should not?

Mr. STEVENSON. Well, at the same time—

Senator ELLENDER. Well, if you will just be truthful, you do not want to agree to his having that much power?

Mr. STEVENSON. Well, I think it is just possible that John L. Lewis will be before this committee, although I don't know. You had better ask him some of those questions.

Senator ELLENDER. And we shall ask him those questions, you can be assured of that.

Mr. STEVENSON. We are running our organization the same as a good many international unions, and many of them are run just the same as ours is. But because somebody has got some feeling against John L. Lewis, is it right and is it proper that everybody's got to suffer for that?

I think if they sit down, they can straighten out John L. Lewis. He isn't such a tough guy to handle—if you know how to handle him.

Shall I proceed now?

Senator BALL. Proceed.

Mr. STEVENSON. The Foundry Workers Union has a membership in excess of 100,000 and is the bargaining representative for approximately 90 percent of the foundry workers in the jobbing foundries throughout the country and of 80 percent of the foundry workers in the captive foundries. Many of the foundry workers, particularly the journeymen molders, maintain membership in the Foundry Workers Union whether or not that organization happens to be the certified bargaining representative of the employees of their employer.

The journeymen molders and foundry workers are proud of their craft and of their organization and are exceedingly grateful for the benefits they have obtained through their union over the years. In years gone by the battle to organize was hard, and from father to son, and journeyman to apprentice, the word was passed of the need for a strong and forceful union to protect and advance the interest of the members of the craft.

Unionism is embodied in the minds and souls of these workers, and is an integral part of their lives, as much as is religion. They bitterly resent those who seek to engage in their particular field of endeavor and who accept the benefits of the union without contributing to the support of that union.

In the industry as a whole there are but a relatively trifling number of these nonmembers. Particularly is this so among the journeymen molders, and the workers in the industry have no desire to work for the interest of those who are not sufficiently interested in the welfare of their fellow employees to join with them in maintaining favorable conditions of employment.

It would be an unbelievable shock to foundry workers generally if this Congress should enact into law legislation which takes from them their time-honored pride in their craft and union. For over three-quarters of a century molders have insisted upon working with only those who appreciate their organization and who are proud to become members, and I can say to you, most respectfully but most definitely, that thousands of our members, in fact practically all, will not work with nonunion workers.

It is difficult, if not impossible, for me to perceive of any inherent evils in a closed shop that require its abolition. What possible objective could legislation to terminate closed shops have, other than to weaken organized labor so it could no longer be an effective and useful force in our society? What possible mischief stems from a closed shop that any man, motivated by reason and not passion, would propose legislation to abolish the closed shop and risk the serious and inevitable repercussions that would cause our entire economy to be disrupted?

Legislation outlawing the closed shop would not bring labor peace but would be the most disrupting influence that I can conceive of on the economy of our country.

Senator BALL. You made the statement in the beginning of your discussion of the closed shop that the great majority of the employees in the country are in favor of the closed shop; did you not?

Mr. STEVENSON. Yes.

Senator BALL. The recent Gallup poll indicated quite the reverse, that the employees, better than 2 to 1, are opposed to it.

Even of union employees, only about 18 percent, I think, of those polled favored the closed shop; some 30 percent favored the union shop; some 35 percent or so are in favor of the open shop.

I was wondering if the Federation of Labor or your own union has ever had a secret-ballot vote on this question of compulsory membership.

Mr. STEVENSON. No. Now, I do not believe these polls give you the true idea. I just read in this morning's paper where a former member of the House Labor Committee, from California he was, Representative Nixon, went to Scranton, Pa., and he said he interviewed foundry workers and others in regard to these labor measures.

Well, I don't know anything about Scranton. There are very few foundry workers in Scranton. And, by the way, there is a member of this conference agreement in Scranton; I will bet you he didn't go see him.

Senator BALL. But you have never taken an actual vote, a secret-ballot vote, on the closed-shop issue in your union, upon whether or not the workers would like to have the closed shop, and wanted it? .

Mr. STEVENSON. Well, we have never thought that would be necessary, because when the matter is brought up—well, let me explain first how it goes in this stove industry.

Now, you see—say some shop is in town and they have got some grievance about that shop, there is something wrong there. Suppose they want to strike that shop that they have the grievance with.

What do they have to do first? They have got to send in a grievance to our office, to me, stating what the grievance is. I, in turn, have to send it out to seven members of our executive board, and when it is sanctioned by them, then leaves it in my hands for action.

The result is that before a strike I send someone in there to find out the cause of this grievance and why they want that strike, and then the members vote, and before they can strike that shop, if you will look in here [constitution, molders union], they have got to have a three-fourths vote by a secret ballot. So that is how we know.

Senator BALL. Well, that is your procedure for a strike vote.

Mr. STEVENSON. Yes.

Senator BALL. I was just questioning your statement that the employees are overwhelmingly in favor of the closed shop. I question that because it does not check with any poll I ever saw, nor does it check from what I have found from my own observation.

Mr. STEVENSON. Senator, they don't come around and see me.

Senator BALL. I know.

Mr. STEVENSON. I know this Gallup-poll guy never interviewed me or wrote me a letter asking me what I thought.

Senator BALL. They never wrote me, either. But their polls have been pretty accurate.

Mr. STEVENSON. If they had done that, I would have told them what I thought.

Senator BALL. They are regarded as pretty accurate in their polls.

Mr. STEVENSON. On some things they are.

Senator BALL. Yes; on open-and-shut things like this.

Mr. STEVENSON. Well, will they go blooey, the same as the Literary Digest did a couple of years ago?

Senator BALL. Senator Jenner introduced a bill on the closed-shop question which is somewhat different. It would require a two-thirds affirmative vote of the membership—of the employees of the unit—before the union could bargain for a closed shop.

What do you think of that, Mr. Stevenson?

Mr. STEVENSON. Personally, I believe—however, I am talking but for our union—I believe that I can take care of it, speaking for our union, when I say that our members cannot strike a shop or force a closed shop unless they have a three-quarters vote.

Senator JENNER. In other words, the percentage you require is even higher than in my proposed bill.

Mr. STEVENSON. Yes.

Senator JENNER. But you have no objection to letting the men say whether they want to have a closed shop by secret ballot?

Mr. STEVENSON. Yes. I do not believe that is necessary. We have been handling those things for a good many years, and I cannot see its necessity—the need for any legislation on that.

Senator ELLENDER. Well, it may not be necessary in your case, since you say or have indicated that these jobs in your industry have been handed down from father to son.

Now, are we to believe from your testimony, and I see that in the way it is handled in your union, that almost anybody can agree with you in a get-together—but, one of the main issues in the testimony of some witnesses appearing before us, and one of the main issues in the testimony has been whether or not there should be a closed shop. We have heard of instances where the unions have struck on that issue with but a handful of people desiring it.

These unions do not proceed as you do; they do not take a vote to strike unless three-fourths of the men vote in the affirmative. What they do is simply put that in as a condition and unless the employer agrees to a closed shop, bingo, he has a strike on his hands, and we see another man out of business.

Mr. STEVENSON. I did not mean to go into this so much, but so long as you have said you had some witnesses testifying; last Friday you had a gentleman here, Mr. Cecil B. De Mille.

Senator BALL. Correct.

Mr. STEVENSON. On the closed shop. Now, here is a newspaper statement I cut from the Cincinnati Times-Star of February 14, 1947. I show you this. It says he went over this, and now here is this, De Mille said, there is one argument for the closed shop in what he said. He referred to the contention that workers who get the benefits of a contract negotiated by a union should share the expense. He said that. He suggested that provision be made likewise for nonunion workers who benefit to pay a full share of the cost of negotiating for those benefits and for the contract.

Now, there is a fellow that is against the closed shop, and then he makes this statement—according to the press. I don't know whether that is in the record or not.

Senator JENNER. We are not taking a position for or against the closed shop, you understand, in questioning you here. As a matter of fact, the bill Senator Ball refers to is in favor of the closed shop; but it is in favor of having the closed-shop determination made by a democratic, secret ballot.

In other words—you require three-quarters of your men?

Mr. STEVENSON. That is, for the strike.

Senator JENNER. Strike. Well, it may be a closed shop.

Mr. STEVENSON. It may be.

Senator JENNER. And, what we are trying to find out is, Do you have any objection to having two-thirds of the men, by secret ballot, determine whether or not they want a closed shop?

Mr. STEVENSON. I do not believe—I don't think the workers of this country believe that any law is necessary. The people decide that themselves.

Senator JENNER. Well, the people do not decide. For instance, under the Wagner Act—

Mr. STEVENSON. I know they do. I worked in foundries years ago.

Senator JENNER. Yes, and we are trying to draw on your knowledge to help us in this problem.

Mr. STEVENSON. Forty years ago I went to work in a little foundry in Connecticut. That was an open shop, and so I know what it is.

The open shop is no good for the employer, he doesn't get the production, and he hasn't got the relationships with the men that he has with the closed shop.

Senator JENNER. Well, in that little foundry where you worked, in New Jersey—

Mr. STEVENSON. It was up at Ansonia, Conn.

Senator JENNER. All right. Now if you had the machinery so that you could come to your Government, if you had that machinery under the Wagner Act now, and if you could ask the Government for an election so you could vote for a closed shop, two-thirds of your men would probably vote for it, would they not?

Mr. STEVENSON. I suppose. And, we would have been glad to do it, at that time, long ago.

Senator JENNER. Well, that is all there is to this bill, to set up an orderly, democratic process for the men themselves to determine whether or not they want to bargain for a closed shop.

Mr. STEVENSON. But, we believe that the members of the union should have the right to determine on that, to vote how they shall take it, where they shall take it, and when they shall take it.

Senator JENNER. That is right. Now—

Mr. STEVENSON. But, without Government interference.

Senator JENNER. Well, now, the Government would not interfere. The only thing the Government would do is hold the election, as they do now under section 9 of the Wagner Act, where they hold a determination by election as to who shall be the bargaining agent.

Do you agree with that in the Wagner Act?

Mr. STEVENSON. No. I would not agree to that, not on the terms you are putting in this bill for a closed shop. No, I would not agree to that.

Senator JENNER. Now, why? You do it now to determine who shall be the collective-bargaining agent.

Mr. STEVENSON. I would do it if we were allowed to take the vote ourselves, in our own union meeting hall.

Senator JENNER. Well, under the Wagner Act, you do not hold the election in your union meeting to determine upon the bargaining agent.

Mr. STEVENSON. Well, now, that is really before the union is formed, or when it is in the process of being formed, you see that, don't you?

Senator JENNER. That is so.

Mr. STEVENSON. In other words, it is to decide who is going to be the union.

Senator JENNER. That is right.

Mr. STEVENSON. The bargaining union.

Senator JENNER. Yes.

Mr. STEVENSON. But, after that—yes, now, if you want me to say it, yes, I am in favor of that election. But, after that—

Senator JENNER. And you do not call that Government interference when it is done under the Wagner Act, do you?

Mr. STEVENSON. No; that is all right. But, when they step over further, after they have voted for the union and for the type of union they want, if they come in and say they will have to have another election to decide under the Government whether they want an election on the closed-shop issue—no. Not that. No.

Senator JENNER. Why would you object to that? That is a condition of employment.

Mr. STEVENSON. What is a condition of employment?

Senator JENNER. The closed shop.

Mr. STEVENSON. It is a condition of employment?

Senator JENNER. Yes. If you do not belong to the closed shop, then you can't have a job.

Mr. STEVENSON. I see what you mean. Well, why do you need an election?

Senator JENNER. Well, don't you think the right to work is a pretty sacred right?

Mr. STEVENSON. Well, why is it necessary to have an election?

Senator JENNER. So that those men can have a say as to whether or not they want a closed shop.

Mr. STEVENSON. They have that say.

Senator JENNER. Anything so vital as that to a man's livelihood is something certainly that they have a right to have a say upon, isn't that so?

Mr. STEVENSON. When you realize, only going back a few years, the number of members organized in unions in this country, and when you take the total number of organized workers in this country now, today, that tells you the story—just within the last 10 years.

Senator BALL. Mr. Stevenson, in your long employment, did you ever run into an employer who used the yellow-dog contract?

Mr. STEVENSON. Yes, many of them.

Senator BALL. You resent that pretty strongly?

Mr. STEVENSON. Yes, I certainly do.

Senator BALL. You resent the principle of the yellow-dog contract; that is, as you know, the individual employee had to agree that, as a condition to his working, he would not join a union.

Mr. STEVENSON. Yes.

Senator BALL. Now, do you think there may not be some individual employee who resents, just as bitterly, the requirement that, in order to work, they have to join the union?

Mr. STEVENSON. No, I don't think so.

Senator BALL. You don't?

Mr. STEVENSON. No, I don't.

Senator BALL. Do you think that is a one-way street, that the unions can apply compulsion, but that the employers shall not be so permitted to do?

Mr. STEVENSON. Now, look here, take one of our shops in the foundry industry. We have established the conditions there, in wages and all the rest of it, all these many years.

Do you think it is right for some fellow to come in there and say, "I will not join the union. I will force you to have an election here." After all those years of agreement with that company—is that right?

And then there is this: You put the boss on the spot there, you might have him coming up for unfair labor practices or something else.

Gentlemen, you have got to be careful of this legislation.

Senator BALL. Do you think that in any shop where you have your union—and I gather from your testimony you have done a pretty good job taking care of your members—do you think you would lose many members, actually, if you had the closed shop outlawed and if the men were free to join or not join, do you think many of them would drop out?

Mr. STEVENSON. I don't think so, because they would either join or we would not work there, like in the old days.

Senator BALL. No; I am talking about the feeling of the individual worker in these shops where you have the union shops. Do you think—

Mr. STEVENSON. Senator, I do not believe we would lose many members.

Senator BALL. Nor do I. I do not see where it would disturb your situation, particularly. It would be a situation like in the railroad industry.

Mr. STEVENSON. Let me give you an instance, now. In 1933 or 1934, I spent a lot of time in Washington here, with writing up some of these codes under the NRA. At that time they did not take in the foundry labor or the semiskilled, we only took in the mechanics.

Now, we did write them up, and I think there were—you see, they had no organization then, and I think they had about 38 of them in foundries in the codes, and we put them in.

Now, after that, after we took them in, what happened? For instance, in this soil-pipe industry I mentioned, the poor Negro laborers down there got about 12 cents or 13 cents or 14 cents an hour for working in those foundries down in the South.

So, we took them in, and we have done a good job for those fellows. The present agreement that went into effect January 6 gives them 82½ cents. That is really the common labor, you see—Tennessee, Alabama, Georgia; all those States. We have done a good job.

I don't believe that those people would want to drop out of our organization.

Senator BALL. I shouldn't think so.

Mr. STEVENSON. Even if they had a chance to take a vote.

Senator BALL. That is right.

Mr. STEVENSON. Why, the companies used to own their homes and everything else. At the end of the week, they found out they owed the company money. I have seen it, when they wanted to borrow \$1, they would give him 75 cents and they would deduct \$1 out of the pay. I have seen that, just a few years ago.

Senator JENNER. In short, there is no question in your case. Two-thirds of your people would still vote for a closed shop.

Mr. STEVENSON. More than two-thirds.

Senator JENNER. That is right.

Mr. STEVENSON. Yes.

Senator BALL. Proceed, Mr. Stevenson.

Mr. STEVENSON. I repeat, to emphasize, that the Foundry Workers Union is the oldest labor organization in this country and as president of this grand old union I feel that I can speak with the highest qualifications concerning the questions and problems of labor relations and the effect the proposed legislation will have upon such relations.

I can state unequivocally that the answer to labor strife does not lie in the enactment of legislation which will make unlawful industry-wide bargaining and will abolish the right of employees to insist upon working only with those who will join with them in advancing their united interests. It has been my experience and the experience of our organization that the only answer to industrial strife is a sincere and honest effort by management and labor to seek out the causes of that strife and to eliminate that cause through sincere collective bargaining.

I reiterate my plea that the procedures proposed in Senate Joint Resolution No. 22 be followed and that a commission go deeply and with open minds into the problem of labor relations prior to the enactment of any legislation. Legislation enacted without such knowledge and research will be dangerous, in the extreme, to our economic well-being, for it will be predicated upon fanciful beliefs and not on established facts.

I am fully confident that if the members of this committee and of this Congress will approach the problems of labor in the light of reason, with the full facts of the causes of labor strife before them, and not in the distorted darkness of prejudices engendered by ignorance in the field of labor relations, those bills purporting to lock the open shop by legislation upon the workingmen of this country and those bills which would seek to destroy bargaining on an industry-wide basis will be cast aside and only legislation which will encourage true collective bargaining will be recommended and enacted.

Senator BALL. Any questions? Thank you, Mr. Stevenson.

Mr. STEVENSON. I would like to leave these with you: Our constitution and the conference agreements.

Senator BALL. Thank you.

(Material submitted by Mr. Stevenson was filed with the committee.)

Senator BALL. Our next witness is Mr. Lyon, executive secretary of the Railway Labor Executives' Association.

STATEMENT OF A. E. LYON, EXECUTIVE SECRETARY, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. LYON. My name is A. E. Lyon. My address is 10 Independence Avenue, Washington, D. C.

I appear, at your invitation, in the capacity of executive secretary of the Railway Labor Executives' Association. This association consists of the national presidents of 20 national and international railroad labor organizations. Many of these organizations consist entirely of railway employees. Others consist of both railroad employees and employees engaged in other industries. Only the railroad departments or railroad memberships of this latter group of organizations are represented by our association. The 20 organizations identified with our association are—if the Senators have copies of my statement, I do not believe it is necessary to read them all now.

Senator ELLENDER. You may skip that list.

Senator BALL. You need not read it. It may be copied in the record.

(The list is as follows:)

- Brotherhood of Locomotive Firemen and Enginemen.
- Order of Railway Conductors of America.
- Switchmen's Union of North America.
- Order of Railroad Telegraphers.
- American Train Dispatchers' Association.
- International Association of Machinists.
- International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.
- International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
- Sheet Metal Workers' International Association.
- International Brotherhood of Electrical Workers.
- Brotherhood Railway Carmen of America.
- International Brotherhood of Firemen and Oilers.
- Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
- Brotherhood of Maintenance of Way Employes.
- Brotherhood of Railroad Signalmen of America.
- National Organization Masters, Mates and Pilots of America.
- National Marine Engineers' Beneficial Association.
- International Longshoremen's Association.
- Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America.
- Railroad Yardmasters of America.

Mr. LYON. These 20 labor organizations are the designated or recognized representatives of more than 1,000,000 railway employees in the United States, or over 80 percent of the total of such workers. The organizations of railroad engineers and railroad trainmen are not connected with our association. There are a few other organizations of railroad workers, relatively small in membership, which likewise have no such connection.

I began my railroad service in 1919 and I have been continuously engaged since that time either as an active railway employee or as a full-time representative of railway employees. In the latter capacity I have served in numerous offices, ranging from a local chairman to national president of one of the organizations. I was vice chairman of the Railway Labor Executives' Association for several years, and I have been in my present position since May 1945.

Many of the organizations for whom I have the honor to speak are among the oldest labor unions in this country. Some of them have

been in existence for about three-quarters of a century—all of them have had 25 years or more of experience in handling railroad labor problems. I think it is widely recognized that they are democratic institutions in which the individual members take an active and intelligent interest; that they have a tradition for honorable dealings with the employers in the industry; and that they have demonstrated a proper regard for the public interest.

The short time available to me requires that a strict limitation be placed on the scope of my statement. Appearing as a representative of more than 1,000,000 railroad employees, it will be my purpose to limit my remarks to the specific question of the effect of certain of the bills now under consideration upon existing railroad labor legislation. This limitation on my part is not to be construed as an expression of approval by railroad workers of any phase of pending measures generally, but rather as a recognition of the fact that others are in a position to speak concerning the over-all effect of such measures upon labor with more knowledge and authority than I. Also, within the limits of the time available, it will be impracticable to attempt a detailed analysis of various pending bills. I will, therefore, confine my comments to a few illustrative provisions indicating certain effects upon railroad labor legislation which certain of the pending bills may be expected to produce.

I wish to divide my presentation into two general subjects and discuss, first, the historical development of special railroad labor legislation designed to meet the peculiar needs of employers and employees engaged in railroad transportation, and, second, the results which may be anticipated from an attempt to superimpose general restrictions such as are here under consideration upon special legislation of this type.

HISTORICAL DEVELOPMENT OF RAILROAD LABOR LEGISLATION

At the present time labor relations in the railroad industry are governed by a special statute known as the Railway Labor Act. This act is the modern successor of a long line of statutes extending well back into the last century, all limited in their application to the field of rail transportation and those companies and employees engaged therein.

As early as 1888 the Congress of the United States began to give attention to the railroad labor problem. In that year, it enacted a statute—Public Act No. 304 of the Fiftieth Congress—which provided for the voluntary arbitration of “differences or controversies” between “railroad or other transportation companies” and the employees of such companies, and for the appointment of fact-finding boards or commissions to investigate into the causes of such controversies. This act was ineffective as far as the settlement of disputes was concerned, and in 1898 was supplanted by the Erdman Act—Public Act No. 115, Sixty-first Congress. This was the first law to place reliance upon the policy of conciliation and mediation for the prevention of railroad labor disputes, and contemplated a temporary board to be appointed in each case. The investigation features of the previous act were repealed but voluntary arbitration was retained as a second line of defense if mediation failed. The act was restricted in coverage to common carriers, their officers, agents, and employees,

but the term "employees" was limited to those actually engaged in train operation.

The Erdman Act enjoyed a considerable measure of success as a means of settling disputes but it was eventually replaced in 1913 by the Newlands Act—Public Act No. 6 of the Sixty-third Congress. This statute had the same employer-employee coverage as the Erdman Act. It established, however, a full-time board of mediation and conciliation, and definitely placed main reliance for settlement of disputes upon mediation. The arbitration procedures, however, were retained and improved as a means of adjusting disputes when mediation failed, and arbitration awards were made enforceable by judicial decree.

The laws I have mentioned were of value to the industry and they doubtless served the public interest at that time. But until major changes were brought about incident to the First World War, there was constant industrial strife in the railroad industry, insofar as the vast majority of railroad employees were concerned, over the right to organize and engage in collective bargaining. It was the general policy of railroad companies prior to the First World War to vigorously oppose the self-organization of their workers and individual employees were frequently discharged or otherwise discriminated against when the railway management learned that they were members of any labor organization. This policy resulted in considerable discord, low morale, and extremely bad labor relations. The lack of organization among the majority of railroad workers resulted in a multitude of injustices and inequities as to wages and working conditions and it was in part because of the chaotic situation that existed in the labor forces that our Government was compelled to take charge of the railroads during the First World War and bring about some degree of harmony and efficiency of operations.

In December 1917 the Federal Government took over the operation of the railroads as a war measure. In the course of the performance of his duties, the Federal Director General of Railroads was required, for the reasons I have mentioned, to meet the problem of wages and general employee relations. The right of employees to organize and bargain collectively was recognized. National collective bargaining agreements were negotiated with the labor organizations able to establish themselves as authorized representatives of employees. Boards of adjustment were established to handle disputes regarding the interpretation and application of such collective bargaining agreements. On the whole, the machinery perfected by the Director General of Railroads for the handling of labor disputes functioned smoothly and well.

When Federal control was terminated, a need was felt for a more comprehensive statutory scheme of labor regulation than had ever before been attempted. This need was effectuated by the enactment of title III of the Transportation Act of 1920. This statute covered all carriers by railroad, and certain companies performing services allied to transportation, and all of the employees of such employers. The statute made it the duty of employers and employees to exert every reasonable effort to settle disputes in conference, but if conferences failed, such disputes were made referable to a board known as the United States Railroad Labor Board, composed of representatives of the employees, the carriers, and the public, in equal numbers.

The device of adjustment boards inaugurated under the period of Federal control was retained, their formation, however, being voluntary and by agreement only. It eventually was established by decisions of the Supreme Court that this statute made no provisions for the legal enforcement of the decisions of any tribunal functioning under it. While the Labor Board accomplished a few satisfactory results and laid down certain salutary general principles of collective bargaining in the early days of its existence, the whole statute eventually came into disrepute and was supplanted in 1926 by the Railway Labor Act.

The original Railway Labor Act was a comprehensive measure drafted in the first instance by the representatives of management and labor, acting in cooperation. It was jointly sponsored by them before Congress and was enacted without amendment. The original act remained in effect until 1934, when it was extensively amended. In its present form the Railway Labor Act is a composite of those features of predecessor statutes and administrative practices which are found to be most successful in operation. It embodies rights of collective bargaining such as were contemplated in the orders of the Federal Director General of Railroads, and those of the United States Railroad Labor Board acting under the Transportation Act of 1920. The carriers and employees are placed under a duty to attempt to adjust their disputes in conference, a provision borrowed directly from the Transportation Act of 1920. If conferences fail, mediation by a permanent National Mediation Board may be sought by either party or the Board may proffer its services on its own motion by provisions similar to those of the Newlands Act of 1913. If mediation fails, voluntary arbitration may be sought, much as under the early act of 1888, the Erdman Act, and the Newlands Act. If arbitration is refused by either party, a special emergency board may be established to investigate the dispute and find and report the facts, a provision reminiscent of that of the act of 1888. During the process of mediation and emergency board proceedings, work stoppages on the part of the employees, or changes in wages, rules, or working conditions on the part of the carriers do not occur. This provision was originated in the Railway Labor Act of 1926. Adjustment boards, found effective during the period of Federal control, are retained in the form of a permanent National Railroad Adjustment Board having an established jurisdiction over disputes involving the interpretation or application of collective-bargaining agreements. The decisions of this Board are enforceable by judicial decree after appropriate proceedings as provided in the statute.

The operation of the National Railroad Adjustment Board may be described as a method of providing a form of arbitration, as the terminal point, in the handling of disputes arising over the application or interpretation of agreements. The vast majority of such disputes are settled at various stages of their consideration between local or system representatives of the parties.

It will be seen, therefore, that the present act represents the fruit of nearly 60 years of orderly evolutionary progress in the matter of statutory regulation. Its roots are firmly planted in the experience of the past. Many of these experiences are peculiar to the railroad industry and those engaged therein. It may be said without fear of

challenge that this statute represents the only integrated law known to this country having such an established background. It may be further said that no other law has produced results comparable to those which it has brought about. Since 1922, and the shopmen's strike of that year, there has been but one major work stoppage in the railroad industry, and this continued for only a short time. There have been other strikes but they have affected the properties of minor carriers and for the most part have been of short duration. No other statutory system can show a comparable record.

This statement does not mean that there have been no disputes between railroads and employees in this period. There have been many and they have been vigorously contested. With the assistance of the statutory agencies, however, they have for the most part been adjusted with so little dissatisfaction with results that with the exceptions noted, no problems of work interruption have developed.

We make no contention that the machinery or methods established by the Railway Labor Act for the orderly handling of railroad labor relations is perfect or that it has worked perfectly. It is, however, the product of a great many years of practical experience on the part of qualified persons representing both labor and management; it is the product of a long series of investigations and hearings by various Congresses of the United States; and it is a system or a combination of methods and devices in a highly complex and intricate field of a specialized character that should not be disturbed or changed by either additions, subtractions, or overlapping provisions in other laws without the most careful and detailed examination and study of the whole matter. Such an examination or study of the subject certainly cannot be made by any committee or committees of the Congress in a few days' or a few weeks' time with any hope that good rather than bad results would follow. Nor, in our opinion, can anything but great harm to all concerned, including the public interest, come from legislative action primarily designed to deal with the labor situation in other industries but which affects either the established procedures being followed in the railroad industry for the orderly handling of labor matters or the practices and standards of labor and management in the industry that have stood the test of time.

The Railway Labor Act is but one of the statutes operating in the highly specialized field of transportation. The industry itself is regulated as to its operations, rates, and practices by the Interstate Commerce Act. The problems of superannuation of railroad employees are governed by the Railroad Retirement Act, while employees of other industries come within the purview of the Social Security Act. The effects of unemployment on railroad workers are sought to be alleviated by the Railroad Unemployment Insurance Act, while as to other workers, this hazard is covered by State statutes. Injured employees in most industries are provided for through the provisions of workmen's compensation acts, either Federal or State, while railroad employees' rights in this connection are governed by the Federal Employers' Liability Act. The Fair Labor Standards Act, while applicable to the wages of railroad employees, does not cover the matter of their hours of labor, this being left to negotiation under the Railway Labor Act.

Railroad employment therefore, is governed as to almost all of its phases by an integrated body of special laws. These laws have grown

up over a period of years and in response to special problems existing within the railroad industry, the long history of organized employer-employee relations in that industry, the difficulties inherent in any attempt at regulation by the several States, and the vital nature of the service performed.

RESULTS OF ATTEMPTING TO APPLY PROPOSED GENERAL BILLS TO THE RAILROAD LABOR FIELD

Insofar as we are able to inform ourselves, none of the bills now under consideration by this committee proposes a direct modification of the statutory system under which railroad labor is now functioning. Various of them, however, propose changes in over-all labor regulation which appear to be applicable to railroad employees as well as others. We believe that any such attempt to modify a highly specialized statutory system through the modification of labor laws having a more general application will lead to results which will be injurious to the system itself and which probably are far removed from the actual intent of the legislators. We have no opportunity in point of time, nor do we propose to make, a detailed analysis of the numerous pending bills with reference to their specific effect upon railroad legislation, but we do wish to call attention to a few illustrative provisions.

Let us first consider the terms of S. 55. Title I of this bill contains a specific exemption from the operation of this title of matters subject to the Railway Labor Act, but the other titles contain no such exemption. Title II, section 201 (a) would make it unlawful for any employer to pay or deliver any money or other thing of value to any representative of any of his employees. This section is susceptible to an interpretation which would preclude the issuance of railroad passes by railroad companies to such representatives, a practice which is now common and is permitted by the Interstate Commerce Act.

Title II, section 202, deals with collective bargaining by "supervisors." While most of this section is phrased as an amendment to the National Labor Relations Act, it would constitute a statement of Government policy which might be considered as being at variance with the policy of railroad labor legislation, which since 1920 has adequately and satisfactorily dealt with the subject. Paragraph (c) of section 202, as I read it, is not phrased as an amendment to the National Labor Relations Act, and it might be contended that its enactment was intended to apply to the railway industry as well as to those industries covered by the National Labor Relations Act. The Railway Labor Act defines the term "employee" in some detail and it provides machinery for the consideration and adjudication of any disputes that arise as to whether certain classes or grades of workers are included within that term. This provision of the railway law was carefully developed with particular attention being given to the problems and experiences peculiar to the railroad industry, and it has successfully operated in substantially its present form for more than 25 years. There have been no work interruptions in our industry caused by coverage of the Railway Labor Act of employees who fall within the definition of "supervisor" as contained in section 202 of the pending bill.

In fact such coverage makes for order and peace instead of discord. Any group of workers who act collectively or who organize for their mutual aid and protection, in the railway industry, are very properly included within the purview of the Railway Labor Act and such provisions are in the public interest. The law imposes certain responsibilities and restrictions upon all such groups as well as conferring certain benefits. Any legislation which the Congress enacts dealing in any manner with the question of representation of or bargaining by employees defined as "supervisors" in S. 55 and similar bills, should very definitely and specifically exempt railway employees and the railway industry from its provisions and statements of policy.

Senator BALL. May I ask there, does the railroad conductor have any power to discharge or hire a crew of the train?

Mr. LYON. I think not, but he can make a report which may result in affirmative action. That is what your bill says.

Senator BALL. He does make recommendations in that regard?

Mr. LYON. Yes; that is true, and that is true with over half of the employees in the industry.

Senator ELLENDER. You do not think that a general provision in the act stating that none of the titles or sections of this act shall apply to the Railway Act would be sufficient?

Mr. LYON. I would suggest if you pass a law of this kind, like S. 55, that you ought to make the exemption at the end and make it clear beyond all doubt that the act would not apply to railroad labor organizations or to carriers and employees covered by the Railway Labor Act.

Senator BALL. Does any railway organization indulge in secondary boycotts?

Mr. LYON. Not that I have ever heard of.

Senator BALL. I have not heard of any, either.

Mr. LYON. Title II, section 203 (a) of S. 55, would vest jurisdiction in the Federal courts in cases involving violations of collective-bargaining agreements. This might be construed as an amendment to those portions of the Railway Labor Act which confer jurisdiction of such cases in the railroad industry upon the National Railroad Adjustment Board.

Title II, section 204, provides that it shall be unlawful to engage in any combination impeding the free flow of commerce if one of the purposes of such combination is by strike or threat of strike, to force or require an employer to bargain with or comply with the demands of a labor organization if the employer is not required to bargain with such labor organizations by the National Labor Relations Act. No railroad employer is required to bargain with any union by the National Labor Relations Act. Hence, this section is subject to the interpretation that a threat to strike by railroad employees or unions for the purpose of requiring an employer to recognize or bargain is to be unlawful.

Turning our attention to S. 133, it appears that this bill is designed to prevent industry-wide bargaining. Such bargaining as to broad principles of employer-employee relationships has long been a characteristic feature of the railroad labor picture. It was introduced by the Federal Director General of Railroads 30 years ago.

I might interpolate there by saying it existed even before that in some instances. As a matter of fact, I think the Congress brought it

about when it passed the Adamson law. Commerce perhaps engaged in an action which was industry-wide at that time, very properly so.

There are in existence today between 20 and 25 large railroad unions and over 100 class I carriers, in addition to numerous short lines and terminal companies. Separate bargaining between each company and each union of its employees as to such issues as wages, vacations, and the like, is obviously impracticable. The practice has been to gradually concentrate basic proposals of carriers or employees into one or two proceedings so that the rights of all could be determined simultaneously. This procedure, however, has never been carried to the point of requiring uniformity in all terms of collective bargaining agreements over the Nation nor a nonrecognition of local differences. We do not believe that S. 133 contemplates any change in this procedure but its terms are such as to leave us uncertain on the point.

Section 5 contains a specific exemption of employees and employment subjects to the Railway Labor Act insofar as that section is concerned. Sections 2, 3, and 4 are phrased as amendments to the National Labor Relations Act and hence do not appear to affect railroad labor. The copy of the bill which we have had available for study contains no section 1, but we presume that the statement of policy in the first paragraph is to be considered as section 1 of the bill. This paragraph contains no section as to employees under the Railway Labor Act, and might be construed as prohibiting or at least frowning upon industry-wide bargaining practices which have long been traditional and successful in the railroad industry.

Senator BALL. How much autonomy do your locals in your brotherhood of a particular road have?

Mr. LYON. They have full autonomy. I think these railroad organizations are democratic organizations. They are the most democratic organizations in America. Most of their constitutions and general rules of procedures are patterned upon the Congress itself.

Most proposals that eventually reach the industry-wide bargaining stage are started with the men themselves. They have local unions. They probably go from local unions to the general committees on each railroad system. From there they probably go to the national and international organizations. The operations of all organizations are not uniform, but they are very much alike as to these democratic procedures.

Now, when we have an issue like a wage increase, when all the men in the country think they should have a wage increase, or, on the other side, the railroads think there should be a wage decrease, there is machinery available in each organization for these things to be considered and debated in local meetings.

We have literally thousands of locals in this country in the railroad industry. The desires of the membership are well known before the national officers of the union are empowered in each particular case to meet with the representatives of the industry on a Nation-wide basis.

Senator BALL. Does that power come through action of the local or referendum of the whole membership of the international?

Mr. LYON. That depends upon the individual organization and the type of issue. I can perhaps best answer that by describing what is done in my own union, with which I am most familiar, of course. We might have quite a number of local unions on a particular railroad system. Each one of those local unions has its representative on a gen-

eral committee, sometimes called the system committee. That would be the membership represented by these various unions on that particular railroad system.

Well, now, it is the function of that general committee to determine issues affecting all the membership on that railroad. The chairman of that committee is called the general chairman, and he is the spokesman of the entire membership of that particular railroad. It is the function of that committee to negotiate changes in agreements, such as a wage increase would be. It is also their function to handle matters of grievances or questions of interpretation of the existing agreement with the higher officials of the railroad system. If the railroad is attempting to decrease wages, for example, that would go perhaps to a referendum to all members, but that would depend upon the situation in the union. If the members of the union are scattered so it is impossible for them to get to meetings—some of our people are so situated—they would probably handle those things by mail and by ballot.

On the other hand, some groups are so situated that all of the members can and do attend meetings. You cannot force them to come to meetings, but most of them do. In such cases they would probably handle their voting and decisions at meetings of the local union, either at regular meetings or at special meetings called for that purpose.

Senator BALL. Does the international have any power to order a system general committee to put certain things in a contract?

Mr. LYON. Well, it is not done that way. Usually the system committees are represented by general chairmen on a regional or national committee, which may consist of two or three hundred men in some cases, which may consider the desirability of following certain methods or bringing about uniformity, where they can.

Senator BALL. The question never arises? They work it out before hand?

Mr. LYON. They work it out and take it back to the membership and have it ratified before they do anything about it.

Senator BALL. You do not have any situation like you have in the United Mine Workers where all dues are checked off and paid to the international which then remits part of it back to the local, which, of course, controls the locals pretty thoroughly?

Mr. LYON. There is no check-off of dues in the railroad industry.

Senator BALL. The members pay their dues to the locals and then remit part to the system and then to the international?

Mr. LYON. I think that is true. I do not know whether it is true with every union. It is true with my union. I would not see anything particularly wrong if they desired to do it some other way.

Senator BALL. There is a vast difference in the power that the international officers wield when they are able to take the whole treasury.

Mr. LYON. The international officers that I know most about do not control the treasury of the international. It is controlled pretty closely by boards of trustees and executive boards. They are far more democratic than perhaps you realize.

Senator BALL. I agree with you about the railroad organizations.

Mr. Whitney threatened to spend millions in a political campaign. His union must be an exception to that situation if he can do so.

Mr. LYON. I have heard that Mr. Whitney denied having made that statement.

Senator BALL. It is very widely quoted.

Mr. LYON. I doubt whether he was accurately quoted.

Although the foregoing by no means constitutes a detailed analysis of all bills now pending before the committee, enough has been stated to reveal the dangers of attempting to superimpose legislation of a general character upon a specialized group of laws developed over a long period in response to the needs and problems of a particular industry. Such a process may well result in the striking down of practices which have never been challenged as objectionable, the beclouding of jurisdictions of Federal boards and agencies presently functioning with a reasonable degree of efficiency, and the rendering unlawful of the normal and legitimate functioning of labor organizations in the railroad labor field, all in line with examples already mentioned.

In all fairness to the proponents of these various measures we do not believe that these unnatural results were intended by them. The fact that they might be brought out unwittingly, however, merely illustrates more forcibly still, the dangers to present railroad labor legislation which are inherent in this or any other general approach unless great care is exercised in spelling out exemptions in situations to which pending bills are not intended to apply.

Our examination of a number of these proposed measures leads us to the conclusion that the general thought has been to exempt from their operation such employees and employment as may be subject to the Railway Labor Act. We trust that our conclusion is an accurate reflection of the thought of those Senators who have introduced these bills and of the members of this committee. We do not believe that any amendment to railroad labor legislation along the lines of any of the bills in question is justified at this time. No amendment to that specialized legislative system should be attempted unless upon careful and special investigation of the system in its entirety, its history and its operation. We do not understand that any such investigation is contemplated in the course of these hearings. Accordingly, we earnestly recommend that no bills whose terms are applicable to the railroad labor situation should receive the approval of this committee.

Summarizing our position with respect to the legislation now before you we state that:

1. The problems of labor relations in the railroad industry have consistently been accorded separate treatment at the hands of Congress and there is no present problem which dictates a need for any change in this long recognized congressional policy.

2. Existing statutes dealing with labor problems in the railroad industry have been outstandingly successful in preventing interruptions to the free flow of interstate commerce and the problems sought to be solved by the legislation before you do not exist in the railroad industry.

3. Existing railroad labor legislation is the result of 60 years of trial and error in a specialized field, and is the product of the most mature and experienced judgment of representatives of labor, management, and Government. It should not be indirectly amended or changed by laws of general application and in any event should not be altered except after careful and special investigation of the operation of the system as a whole and its historical background.

Senator BALL. I think I can assure you, Mr. Lyon, that there was no intention of modifying the Railway Labor Act in any bill. I do

not think any of the authors of any bill intended to do that. It is true that we may have done it inadvertently.

I would like to ask you a question. I do not know whether you want to discuss it or not. As the Railway Labor Act has been interpreted to me it does prohibit any form of so-called union security clause contract. Can you tell us something of the history of the railway labor movement prior to the passage of the act, whether they sought or had any union security clause and how it has worked since?

Mr. LYON. Well, the provisions in the Railway Labor Act that deal with the question of representation of employees were contained in the amendments of 1934 prior to the passage of the so-called Wagner Act. Up to that time we had a great deal of difficulty with yellow-dog contracts, company unions, and employer opposition to the organizing of the workers. The 1934 amendments to the Railway Labor Act, among other things, made it unlawful for an employer to interfere with the self-organization of employees. It required the employers who had organized these company unions to cease their support of them.

It stopped them from carrying forward the check-off of dues to these company unions. Now, undoubtedly, the amendments in that particular part of the Railway Labor Act of 1934 were designed to guarantee the right of self-organization of the employees without interference or coercion by the employer.

Senator BALL. Had any closed shop existed on the railroads prior to that time?

Mr. LYON. No; I do not think so. There may have been on some small properties, but certainly it was not the general situation.

The unions, I think, in 1934 would have preferred to have the language of the law deal with these company unions as such. As a matter of fact, I think we proposed an amendment to the Committee on Interstate Commerce of the Senate, which committee has always handled that legislation, in which we suggested that these practices as to company unions be specifically outlawed and that company unions be specifically referred to.

I believe, Mr. Eastman, who was the Federal Coordinator of Transportation in 1934, testified before the committees of Congress and recommended language that made these prohibitions against company assistance to company unions apply to any union. That is the way the legislation was enacted. That is the particular language which has been interpreted to prohibit the closed shop.

Senator BALL. It is substantially the language that is in section 7 of the Wagner Act, is it not, to guarantee the right of employees, free of coercion, to join or organize?

Mr. LYON. The principle is the same, Senator Ball, but the language is considerably different, and many details are considerably different.

Senator BALL. Are most of your unions 100 percent organized?

Mr. LYON. Most of them are very well organized. In certain localities and on certain railroads they are 100 percent. As a matter of fact, I know some are more than 100 percent. They have more people in their local unions than they have people employed. We have people that will keep their membership after they have left the industry. There are other places where they have these chiselers that you spoke of this morning that do cause trouble. The majority of the union members do not like to work with them.

Senator BALL. You think they stay out of the union primarily because they do not want to pay dues?

Mr. LYON. Some of them are just that cheap. There are others that have other reasons. As a matter of fact, we have men that we will not take in the union. There are very few of those.

Senator BALL. Certainly, the operating crews of the railroads are about 100 percent organized.

Mr. LYON. I think that is true throughout the industry. There are exceptions.

Senator BALL. Thank you, Mr. Lyon.

The committee will stand adjourned until 10 o'clock tomorrow morning.

(Thereupon, at 3:50 p. m., the committee adjourned, to reconvene at 10 a. m., Wednesday, February 19, 1947.)

LABOR RELATIONS PROGRAM

WEDNESDAY, FEBRUARY 19, 1947

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D. C.

The committee met pursuant to adjournment at 10 a. m. in the caucus room, Senate Office Building, Senator Robert A. Taft (chairman) presiding.

Present: Senators Taft (chairman) presiding, Aiken, Ball, Morse, Jenner, Ives, Thomas, Murray, Ellender, and Hill.

The CHAIRMAN. The committee will come to order. Our first witness is Mr. Philip Murray, president of the Congress of Industrial Organizations. Mr. Murray, you will have the whole of 2 hours, because the Senate meets at 12 o'clock. Will you read the summary of your statement, or you might make a direct talk?

STATEMENT OF PHILIP MURRAY, PRESIDENT, CONGRESS OF INDUSTRIAL ORGANIZATIONS, WASHINGTON, D. C.

Mr. MURRAY. I thought I would make a direct talk, Senator.

The CHAIRMAN. Very well. We have been waiting until the witness has finished one subject and then opening that subject to questions before going on with the next subject. We will not interrupt you until you finish a subject.

Mr. MURRAY. May I place in the record a copy of my statement?

The CHAIRMAN. Yes; I have it here, a brief of your full testimony. Then you have an appendix B on prices, profits, and wage trends, then a memorandum on the Ball-Taft-Smith bill, then a memorandum on S. 105, a memorandum on S. 55, a memorandum on S. 133, and a memorandum on S. 360. You wish to place all of those in the record?

Mr. MURRAY. Yes.

The CHAIRMAN. I am only trying to save a little money in printing. I wonder whether the briefs on these bills could not be furnished in sufficient quantity to be handled without reprinting them? The committee will give full consideration to them and read them all. They will be made available to anyone who wishes to study the record.

(The brief referred to appears hereafter; the other material referred to was filed with the committee.)

Mr. MURRAY. Mr. Chairman and gentlemen, I should like, with the permission of the committee, to indulge myself in the submission of a few extemporaneous remarks concerning the legislation which is now under consideration by the committee, and I should like the committee, if it cares to, to interrupt me at any stage of the proceedings

and ask any questions that you care to, and I shall do the best I can to answer them.

I think perhaps I might get my ideas before the committee in a more plausible and logical way by presenting to the committee my own individual analysis as to the conditions, the economic conditions, the labor-management relationships existing throughout the United States of America today, particularly in the basic industries which I am privileged to represent in appearing before the committee this morning.

I believe it to be an incontrovertible fact that we have in the United States today a more peaceful labor-management relationship than we have had perhaps at any time in the course of the past decade. I believe—and I think the facts will support me—that the productive energy and the efficiency of American workers as of today and in the course of the past few months has reached an all-time peak. That, I believe to also be an incontrovertible fact, and that hindrances with regard to a further acceleration of increased productivity is directly attributable to the shortages of certain types of materials over which no one seems for the moment to have any control.

I should like to place in the record some statements of fact with regard to the diligence, the application and the efforts of American labor, particularly that portion of it which I am privileged to represent, in its endeavor to acquire constructive, decent, honest labor-management relationships here in the United States of America.

In the early part of 1946 American labor—and of course, America, including the workers employed in industry—was confronted with a series of so-called “strikes,” and particular note, apparently, in the public prints at least, has been directed to the steel strike of 1946. I should like to refer historically to the events that transpired before the steel strike and what it was that caused that strike.

In September of 1945, some few months prior to the expiration of the steel agreement, negotiations were undertaken in the steel industry to obtain through peaceful, mutually satisfactory collective bargaining a wage increase. The negotiations broke down. The United Steelworkers of America submitted to its membership, in accordance with the provisions of our Federal statutes, a strike vote. Over 80 percent of all the workers employed in the steel industry participated in that vote, and approximately 80 percent voted to strike because of their inability to secure a satisfactory collective bargaining contract.

Senator ELLENDER. Did that include nonunion members?

Mr. MURRAY. That included all the industry. All participated in the vote.

Senator ELLENDER. Union and nonunion men?

Mr. MURRAY. Union and nonunion, everybody—that is, everybody eligible to vote under the law.

Not being able to reach an agreement, the strike date was set. The President of the United States intervened and requested the president of the United States Steel Corp. and myself to meet him for the purpose of discussing the merits of our respective positions, and as I understand, to avert, if possible, a strike taking place.

Senator BALL. Mr. Murray, was that vote among just the employees of United States Steel or was it among all the members of the union, all the plants with whom you had contracts?

Mr. MURRAY. All of the plants with whom we had collective bargaining contracts.

Senator BALL. Your negotiations were with United States Steel and other companies?

Mr. MURRAY. The negotiations were with all of the companies, going on at different spots throughout the United States. The industry had taken exactly the same position in each instance, and we had negotiations going on with Bethlehem, Youngstown Sheet & Tube, Republic, Allegheny Steel, Wheeling, Jones & Laughlin, Inland Steel.

Senator BALL. How about all the little fabricators with whom your union had contracts?

Mr. MURRAY. We had negotiations going on with them.

Senator BALL. Had they all broken down?

Mr. MURRAY. All had broken down.

Senator BALL. All of them?

Mr. MURRAY. All, insofar as I know, had broken down.

Senator BALL. We had several witnesses here who testified that they agreed to a tentative agreement with their local unions.

Mr. MURRAY. Well, I don't know of any of those instances, Senator, where they had reached any kind of a tentative agreement with local unions. There were a number of overlapping contracts in the fabricating industry where provisions were made to continue operating, that were not affected by the strike vote, and where local extension arrangements had been provided to take care of those situations.

The CHAIRMAN. But that was not generally so, Mr. Murray. There were strikes in every plant in Ohio, practically, with the exception of one or two. From 50 to 100 plants, nonintegrated steel, an entirely different industry, were struck in Ohio because the men were members of your union.

Mr. MURRAY. I assume that is right.

The CHAIRMAN. And that was because, was it not, instructions had been issued to them not to settle any case unless they got \$2 a day increase in wages?

Mr. MURRAY. That is not so, Senator.

The CHAIRMAN. That was the testimony given, and that was the impression I got from the newspapers at the time.

Mr. MURRAY. I understand that people can get all sorts of impressions from reading newspapers—at least I do.

The CHAIRMAN. Do you mean to say that you did not issue instructions to all international representatives negotiating for members of your union that they should not settle for less than \$2 a day increase until you had settled with Big Steel? You did not issue such instructions?

Mr. MURRAY. Let me say this. You talk to me about issuing instructions, Senator. Now, let us differentiate between an individual issuing instructions and a policy of an organization. Shall I go into that with you now?

The CHAIRMAN. Yes; I mean I don't care whether you did it or whether the union did it; I am just asking to find out if that was not the fact.

Mr. MURRAY. The facts are these—and I want to explain to you the structure of the steelworkers union. We elect—and I mean elect—the representatives from each of the subdivisions of our union, fabricating and basic, through district conferences, representatives of the

national wage policy committee, this national wage policy committee being the directly elected, bona fide representatives of all people and all unions, local unions, affiliated with the international union.

The policy committee met in the city of Pittsburgh last year, a year ago last fall, and enunciated a national wage program. That program comprehended an increase of 25 cents per hour, both in fabricating and in basic steel. The program, however, was sufficiently flexible to enable representatives of our union in particular situations to work out arrangements mutually satisfactory to the local union and the particular company involved in that proceeding. That was the policy of the steelworkers union 1 year ago, and the fabricator who says that the steelworkers policy committee had framed an over-all policy of an inflexible nature is misrepresenting the facts.

The CHAIRMAN. The international union is the bargaining agent in every case, is it not?

Mr. MURRAY. The international union and the local union and the districts are the bargaining agents in every instance.

The CHAIRMAN. You mean all three?

Mr. MURRAY. All three.

The CHAIRMAN. And the international union has a veto on any decision?

Mr. MURRAY. The international policy committee has the veto. The representatives of these local unions—the international policy committee is the sovereign power, not the international officers.

The CHAIRMAN. I understand, but that is a branch of the international union?

Mr. MURRAY. It is a body created by the international union to provide and promote democratic action for the disposition of all problems arising within the union, affecting wages and working conditions.

The CHAIRMAN. Before your settlement with Big Steel did you approve in any case any agreement giving less than 25 cents an hour?

Mr. MURRAY. Several.

The CHAIRMAN. Several? Where?

Mr. MURRAY. Well, we have a record, and I will put them in the record.

The CHAIRMAN. But a very small proportion of the whole?

Mr. MURRAY. I should say small; yes.

The CHAIRMAN. After the 18½ cents agreement was finally reached, did you approve any agreement that was not 18½ cents across the board?

Mr. MURRAY. Oh, yes.

The CHAIRMAN. Will you put those in the record also?

Mr. MURRAY. Yes; we had certain extenuating situations of certain unique operations where the organization was not interested in driving individuals into a state of bankruptcy, and where we effectuated agreements at a rate below the 18½ cents, and I shall be delighted to place those in the record for your information, Mr. Chairman.

The CHAIRMAN. May I ask one more question? How many industries does this union operate in? Do you know?

Mr. MURRAY. Well, of course, the jurisdiction of the union runs into many fabricating plants, and it is difficult for any group to ascertain them all. I have endeavored to derive from informational sources in the Federal Government a break-down of these particular

industries. It is sufficient for me to say that approximately 75 to 78 percent of the total membership is directly or indirectly attached to the basic industry, because the basic industry interests itself not only in the manufacture of steel as such, but it controls many of the fabricating plants throughout the industry.

The CHAIRMAN. The other 20 or 25 percent extends into industries that simply use steel in making other things? Isn't that true?

Mr. MURRAY. That is quite true. I think that is quite true.

The CHAIRMAN. Are you operating in some industries where no steel is used, where they use wood?

Mr. MURRAY. I don't know of any such. I think we are in the metal-trades industry exclusively. I don't know of any such.

Senator BALL. Mr. Murray, when your negotiations with United States Steel broke down—

Mr. MURRAY. I made a mistake there, in that I should say we are in the iron ore mining industry.

The CHAIRMAN. Iron-ore mining?

Mr. MURRAY. That is right. They are owned by the basic-steel employers and are part of the steel industry.

Senator BALL. Mr. Murray, when the strike was called, it affected all but these few employers with whom your locals and the international had negotiated for settlement?

Mr. MURRAY. That is right.

Senator BALL. And you are telling us here that the negotiations had broken down with all the others?

Mr. MURRAY. That is right, insofar as I am aware, all of the others; yes.

Senator BALL. I take that as a little hard to believe. There are some 2,000 employers, and you say the negotiations broke down simultaneously in all those plants?

Mr. MURRAY. It may be difficult for you to believe, Senator, but if I should assure you now that it is a fact, that is about all I can say about it. The mechanisms and the structure of the steelworkers' union provide ample opportunity for 1,500 negotiating committees to be at work at the same time.

Senator BALL. And all those 1,500 reached an impasse at the same time?

Mr. MURRAY. No; not exactly at the same time. They did reach an impasse. Do you know that historically for a period of approximately 60 years in the metal-trades industry, particularly in those industries over which my union assumes jurisdiction, the basic-steel industry has developed the pattern, and the fabricating industry has always followed? Long before the union ever came into being, that has been the practice. That is an incontrovertible fact. That policy has been traditional in fabricating and basic steel. For over half a century, many years before the union ever came into being, that had been the common, accepted practice—the tradition.

Senator AIKEN. Mr. Murray, do you think it was pure coincidence that 1,500 or 1,600 employers refused to meet the demands of the union all at the same time?

Mr. MURRAY. Well, I might use that as a subtle method of reasoning in an argument with Senator Ball, but I am not going to do it, because it is of no particular advantage to me, nor is to Senator Ball.

Senator AIKEN. There seemed to be a general understanding on both sides?

Mr. MURRAY. Yes. The implication of Senator Ball would lead one to believe that there was a conspiracy of 1,600 negotiating committees to abruptly end negotiations. That is a lot of tomfoolery; just a lot of nonsense.

The CHAIRMAN. The reason why they broke down was because your demand was universal for \$2 a day increase, and nobody wanted to pay it. I don't say that it was not a reasonable demand, and I think your interpretation that negotiations all broke down is a fair one, but it was because of the flat decision on your part that you would only take \$2 a day increase, and because the flat position on the part of the employers was that they would not pay \$2 a day. Wasn't that the reason the negotiations broke down?

Mr. MURRAY. Not altogether. And I might make this statement that they broke down at various stages of the proceedings. Some broke down before others broke down. Some companies in the fabricating industry accepted the 25-cent demand of the steelworkers and negotiated agreements voluntarily months before the 18½-cent agreement, wage agreement, was made effective by Presidential recommendation.

Senator AIKEN. Did they keep those agreements after the general strike was called?

Mr. MURRAY. They did, and they continued at work. But the point I want to make—and it seems to me that I should emphasize it—the President of the United States called Mr. Fairless and me over here to Washington. We sat over here at the White House for, I think, 2 or 3 days. We had extended discussions with the President of the United States and with a number of his representatives.

All of the facts pertinent to the issue were revealed in calm, deliberate, collective-bargaining fashion. At the end of our 2- or 3-day meeting, the President of the United States asked me if I would not request my people to postpone the strike for 1 week, to enable the President to develop more facts with relation to the situation. I promptly acquiesced, and I telegraphed our local unions, asking their sanction to continue at work for a period of 7 days, which they did. They continued at work, and at the end of the 7-day period the President of the United States called Mr. Fairless and me back to the White House and said: "Gentlemen, this Nation cannot afford a steel strike. I am going to submit the recommendation to both of you. Neither of you may like it, but I am going to recommend to both of you that you apply an increase of 18½ cents an hour." On behalf of my union I accepted the Presidential recommendation, with the understanding that it would be referred to my wage policy committee for approval. The United States Steel Corp. and the steel industry said "No." They said "No."

Senator ELLENDER. Did they say "no" because no price increase would be granted by the President?

Mr. MURRAY. No; I cannot say that the issue of price was raised at that point, Senator.

Senator ELLENDER. But when it was finally accepted, though, didn't the President come in and say, "We are going to raise prices"?

Mr. MURRAY. When it was finally accepted there was some price adjustment, and I should like to go into that with you also.

Senator ELLENDER. Wasn't that the bone of contention of the employers: That they would not agree to the raise unless there was an increase in price?

Mr. MURRAY. I think you are right in substance there, Senator, that the position of the industry was that they wanted a price increase. But the position of the industry was also one of opposition to the Presidential recommendation.

Senator ELLENDER. They were opposed to an increase in pay unless and increase in price was given?

Mr. MURRAY. No; they didn't put the "unless" in there.

Senator ELLENDER. Well, I beg to differ with you.

Mr. MURRAY. Well, that is a God-given American right to you—to differ with me about that. But I was like Kilroy—I was there, Senator. [Laughter.]

Senator ELLENDER. Yes, I know that. I understand that. I was not there, but I was on the committee and had you before the committee when you took the position that an increase in wages could be accorded by the industry without increasing the cost of the commodity. Didn't you say that?

Mr. MURRAY. I don't know that I did.

Senator ELLENDER. I know you did.

Mr. MURRAY. Well, my recollection is not clear as to what I said to your committee at that time. But I am now talking about the Presidential conference at the White House, and the thing that caused the strike. Now, factually—and I am dealing now with facts—the President of the United States recommended the institution of an increase of 18½ cents. The union accepted and the industry said "No." Now, you can offer any extenuating situation you care to about that, Senator—let it be price or whatever it may be—the facts stand out glaringly that the strike in the steel industry in the winter of 1946 was directly attributable to one outstanding fact, and that was that the industry said "no" to the Presidential recommendation.

Senator ELLENDER. Without an increase in the cost of material.

Mr. MURRAY. Forget that, Senator.

Senator ELLENDER. But that was an issue.

Mr. MURRAY. I am willing and prepared to agree with you that it was an issue.

Senator ELLENDER. Did Mr. Fairless ever bring that to the attention of the President? Don't you know he did?

Mr. MURRAY. I suppose he did.

Senator ELLENDER. Of course he did.

Mr. MURRAY. But I was not there. I don't know. I am merely talking about things I actually know now. That strike lasted for 21 days.

Senator MORSE. May I ask a question at this point, Mr. Chairman?

The CHAIRMAN. Senator Morse.

Senator MORSE. I want to go back, Mr. Murray, to your statement that the collective bargaining negotiations broke down in the early stages of the steel strike history. You made a demand for 25 cents an hour increase?

Mr. MURRAY. Yes.

Senator MORSE. The steel company refused to meet your demands?

Mr. MURRAY. Yes.

Senator MORSE. Is it not true that at that point in their negotiations one of the reasons they gave for not meeting your demand was their contention, rightly or wrongly, that they could not pay 25 cents an hour unless the Government lifted its price-control ceiling to a degree necessary to permit them, according to their calculations, to pay 25 cents increase?

Mr. MURRAY. I think the Senator is correct in that, but let me point out that as a part of the proceedings leading up to the strike and the Presidential recommendation, there was a lot of history. A lot of things transpired between September and the latter part of January or the beginning of February, when the strike took place. The Secretary of the Department of Labor, representing the President of the United States, asked the steelworkers union as early as November or the latter part of October 1945 to come over to Washington and permit the Department of Labor to use its mediation and conciliatory devices to work out a satisfactory conclusion. The steel industry did not come. They would not come. They said they would not come. They did not raise the price issue at that time. They just simply refused. They abstained; they kept away and they told the Secretary of the Department of Labor that they did not intend to come over and talk to him about it. So, from the latter part of September until, I believe, the latter part of January, despite efforts on the part of governmental agencies to bring about conciliation and mediation, the industry obstinately refused to participate in any of the mediation proceedings suggested by the Federal Government through the Department of Labor. The steelworkers union, on the other hand, stood ready, prepared, and willing to cooperate with the Federal Government in the adjudication of that dispute at all times, and in fact, I addressed a communication to the Secretary of the Department of Labor advising him that we would participate in any sort of a hearing arranged by the Federal Government, by the Department of Labor, to peaceably adjudicate these differences.

Senator MORSE. Mr. Murray, it may very well be so, and if you say it is, I certainly will take your view, that that is at least your understanding of the facts, but the point I want to make is that I want to relate this discussion, after all, to legislation, and that is what this committee is concerned with, namely what, if any, legislation shall we pass.

Is it not true that in the early period of the steel negotiations it was impossible to get away from the fact that the Government of the United States was also a party to the negotiations indirectly, in the sense that it was operating price controls which were effective upon the steel industry, and that therefore we, as the Government, had the duty of informing the American people as to whether or not the price controls we were imposing upon the steel industry were such that it was impossible for the steel industry to meet the demands that you were making upon it?

Mr. MURRAY. I think I should say this, Senator, that the industry was making an issue out of the price situation. There may be differences of opinion at that point as to whether there was justification on the part of the steel industry for asking for the type of price increase that they were seeking.

Senator MORSE. And that was a very important issue to find out the facts about.

Mr. MURRAY. It was an important issue prior to negotiations, Senator; months preceding it.

Senator MORSE. Do you know of any steps that were taken by the administration at that time, in the early stages of the controversy, which might have averted the strike if they had conformed with factual data as to whether the position of the steel companies on the price issue was true or false?

Mr. MURRAY. Again I have no direct information as to what transpired, except such information as may have come to me from time to time through the Field Division of the OPA, and I am told that the experts employed in the Steel Division of the Office of Price Administration have made an over-all study of the price situation in the steel industry months preceding the negotiations. That has been going on constantly, and they had made some recommendations to the President about a price increase, I believe approximating \$2.50 or \$3 a ton, sometime prior to the consummation of our wage contract with the steel industry.

Senator MORSE. Was that information discussed by the President with you and the president of the steel company in your conferences at the time he proposed the 18½ cents?

Mr. MURRAY. Not with me, Senator. It was not discussed with me, although it is my understanding it was discussed with the industry, but not with me. I did not participate in any price discussions with the Federal administration.

Senator MORSE. I am not passing judgment on whether they could or could not pay the wage increase with the prices they were then receiving, but the point I make—and this is a legislative point that I don't think this committee can get away from—is that when you have Government control such as existed in the steel industry at the time you started to negotiate or attempted to negotiate your contract, I ask your statement as to whether or not it is justifiable to talk about free collective bargaining under that situation until we know whether or not those Government controls as imposed permit free collective bargaining, because of the price restrictions they placed upon the industry.

Mr. MURRAY. That, I suppose, will always remain a disputed question. It is like any other situation that has developed with regard to many controversies here in the city of Washington. There seem to be two sides to that question. There were those who contended that prices—that is, the amount that had been recommended, the increase recommended—would be sufficient to take care of a substantial wage increase.

Senator MORSE. I understand, but didn't that, in view of such contention, place an obligation on the part of the Government to inform the American people what the facts were? They either were true or they were false, and it doesn't seem to me that any attempt was made by this administration to give us those facts until the fat was in the fire, and then, of course, everybody got burned.

Mr. MURRAY. Well, I don't know just exactly—I think that, Senator Ellender, that matter was discussed before the Senate committee about a year ago.

Senator ELLENDER. Yes; it was discussed fully.

Mr. MURRAY. Lengthily.

Senator ELLENDER. Yes, sir.

Mr. MURRAY. I suppose all of the relevant facts were covered in the course of that testimony.

Senator ELLENDER. And you were asked about it in executive session, and it was demonstrated that the President and his advisers took the position that 18½ cents per hour could be given without increasing the cost of steel, and that was the reason why, as I look at it, the steel industry refused to further negotiate, and it was only after 21 days, or whatever length of time your strike continued, that the President and his advisers gave in and permitted an increase in the price of steel.

Mr. MURRAY. I am going to assume that that is true. I think that is true, as far as my recollection goes, Senator. I believe it is.

Senator ELLENDER. That is exactly right.

Mr. MURRAY. But might I point directly, gentlemen, to the issue before you—and I should like to emphasize this point—we have had one strike in the steel industry in 11 years. That is a surprising and perhaps an astonishing revelation, but again it is a fact. We had a strike in 1937 over our right to organize. It continued through the early part of 1937. That strike was conducted against some of the so-called Little Steel companies, namely, Republic in particular, and Bethlehem, Youngstown Sheet and Tube. What was wrapped up in that strike? And I speak about that strike because it has a particular relationship to the kind of legislation now under consideration by this committee.

There were 17 steelworkers brutally murdered in the course of that strike. And what were the issues? Recognition of their union and their right to belong to a union. That was the issue that precipitated the strike. That was the issue that caused the strike.

The CHAIRMAN. They also besieged the plant in Warren, Ohio, and prevented the United States mails from going in. They shut the people up in there and used extreme violence. I don't want to embarrass you; I am only pointing out that there are very strong arguments on both sides of that particular question.

Mr. MURRAY. That is an assertion on your part, but do you find that fact developed in the course of any judicial proceeding?

The CHAIRMAN. I don't say who was to blame.

Mr. MURRAY. You may say who was to blame, Senator, because the Republic Steel Corp. was found guilty by the Supreme Court of the United States in that case.

The CHAIRMAN. Of doing some things that were wrong, and the union was found guilty of doing some things that were wrong.

Mr. MURRAY. The Supreme Court of the United States of America decreed, in its wisdom, that the Republic Steel Corp. had violated the law, and it penalized them, and it restored the strikers to their former positions, some 5,000 that had been discharged.

The CHAIRMAN. However, they did not find that the union did not besiege the plant and prevent anyone from entering the plant by the use of violence, mass picketing, which resulted in Governor Davey of the State of Ohio calling out the Ohio State Militia in order to enable people to get into their own property. The Supreme Court found nothing against that.

Mr. MURRAY. Was that issue brought in?

The CHAIRMAN. I don't want to get into the question of the merits of that strike. The merits may have been entirely on the side of the

men. The companies may have done many wrong things. I am only saying that you cannot say it was a one-sided proposition.

MR. MURRAY. Mr. Chairman, in the interest of fairness, the facts or the assertions that you make with relation to the things that may have transpired after the strike took place may or may not be true, but will you not agree with me that the cause of that strike—and that is the one thing that I want you to answer “yes” or “no” on, Mr. Chairman—the cause of that strike was the steel industry’s refusal to recognize the union, and the wholesale discharge of some 5,000 workers.

THE CHAIRMAN. That was the cause, but the question whether or not the union at that time represented the majority of the men was never determined, and the merits of that controversy—

MR. MURRAY (interposing). Yes, it was.

THE CHAIRMAN. No, it never was.

MR. MURRAY. Oh, yes, it was determined. Shall we produce that record to satisfy you also, Mr. Chairman?

THE CHAIRMAN. You had better produce it if you can, because there is no such evidence.

MR. MURRAY. We had a vote, a National Labor Relations Board vote, Mr. Chairman, and we determined our correct bargaining rights in Republic.

THE CHAIRMAN. There never was an election to show that they had a majority of the men at the time the strike was called.

MR. MURRAY. At the initial stages of the strike; no. I quite agree with you, when the strike originally took place. That is right. The strike took place, Mr. Chairman, over an issue that is raised in certain legislation presented to your committee here.

THE CHAIRMAN. However, Mr. Murray, I don’t want to enter into an argument about that. All I wanted was not to have what seemed to be a one-sided presentation of that situation. But I don’t see that that has any particular bearing on our question here. We are concerned now not with past history particularly, except as it bears incidentally on the question here. We are concerned now with whether we should pass this legislation, and so far we haven’t got to that.

MR. MURRAY. I had just gotten to the point—

THE CHAIRMAN. That is our fault as much as yours.

MR. MURRAY. I had just gotten to the point of laying before the committee a record that I am proud of, a record involving some 900,000 workers in a particular union. We have had one major strike in that union in 11 years. That was last year—one strike. And I would ask you to invite any leader of the steel industry to come over here and sit in this witness chair and ask him if that is not true. And that strike that took place, that one strike, took place because of the industry’s refusal to accept a recommendation of the President of the United States.

SENATOR BALL. You are referring to basic steel, are you not?

MR. MURRAY. I am talking about basic steel and fabricating steel.

SENATOR BALL. You had quite a few strikes in fabricating all through those 10 years.

MR. MURRAY. No, sir.

SENATOR BALL. In individual plants.

MR. MURRAY. We may have had an occasional one, but no general strike.

The CHAIRMAN. Wasn't Timken Roller Bearing down for months?

Mr. MURRAY. Yes; Timken Roller Bearing was down for months. I almost overlooked that. Would you take recourse to the Government record to ascertain the facts in connection with Timken Roller Bearing?

The CHAIRMAN. I am not saying it was not justified, but you said there were none.

Mr. MURRAY. Oh, yes. But you didn't take occasion to remind me of the provocative circumstances that led up to the Timken strike.

The CHAIRMAN. I never went into the merits of it at all. The union may have been all right or all wrong. I don't know about that.

Mr. MURRAY. Senator, in all fairness to the American people and all of the interested spectators that we have in this room, isn't it best that we should always ascertain the causes and the facts, the underlying causes and the facts? I think it is best we should do that. Now, I think the record of the union will stand up, both with regard to its contractual commitments to the employer and its obligations to the American people, to the Nation, and I forswear to this committee, insofar as my union is concerned, its definite, binding allegiance to its commitments, its collective-bargaining commitments.

If that is the record in steel—and I know it to be the record in steel, one of the most important industrial units in the United States of America—what transpired with reference to the two other major strikes in the United States of America last year?

As to the automobile strike, about which there was so much public discussion, isn't it a fact that that strike was prolonged for weeks, many weeks, following a recommendation of a Presidential fact-finding committee, where the union accepted the fact-finding recommendations and the industry said "No"? The record certainly points to that.

Senator ELLENDER. May I interrupt at that point? I recall very distinctly when Mr. Reuther, president of the CIO union that represented the automobile industry—that is, the workers—said, and it is in the record, that he would not expect the 18½-cent increase, or any increase at all, if it meant an increase in the cost of automobiles, but you know as well as I do that that did not occur. As a matter of fact, the price of automobiles was raised almost in proportion to the percentage-wise raise in wages. Isn't that true?

Mr. MURRAY. Well, again, I don't think I can differ with the Senator about what somebody said in the course of hearings here with relation to the issues.

Senator ELLENDER. And as to what really happened—that is, after the wage raise was made—you know as well as I do that the only reason why we had a settlement of the strike was because of the fact that OPA permitted the automobile manufacturers to raise the price of the automobiles—all of which was absorbed by the general public.

Mr. MURRAY. Again, Senator, I get back to the facts. I know that there was considerable controversy in those collective-bargaining conferences about prices, but why was the strike prolonged? The strike was prolonged after a Presidential fact-finding commission had made a recommendation to which the industry said "No."

Senator ELLENDER. That is true.

Mr. MURRAY. And the union said "yes."

Senator ELLENDER. Yes, but it gave you almost what you asked for, and denied the industry the amount that it asked for. Isn't that true?

Mr. MURRAY. Well, the events that have transpired with relation to increased prices are a subject that I go into extensively in this brief here before you, Senator, and I think that the price increases that grew out of that situation have been outrageous, as will appear when I point to the profit figures that I present to you here—and they are not CIO figures.

Senator ELLENDER. But, Mr. Murray, you seem to take the position that labor followed the advice of the President and that industry was at fault, but the results are that industry gave in when it was permitted to increase its commodity prices commensurate with the amount of wages that were allowed to labor.

Mr. MURRAY. I am not going to become involved in an argument about that, Senator. All I know is that in the course of these Presidential fact-finding hearings in the automobile industry, in the meat-packing industry, and in the oil industry, all of which were affected by strikes, whatever the merits were in the situations to which you refer, in each of those situations fact-finding commissions appointed by the Federal Government recommended certain forms of settlement.

Senator ELLENDER. Yes, that is true.

Mr. MURRAY. And in each instance the industry said "no."

Senator ELLENDER. It said "no" for the simple reason that the President took the position—and by the way, that is the reason we have got a Republican Congress here and everything else—the President took the position that wages could be raised without increasing commodity prices, and any schoolboy should have known better—even you. [Laughter.]

Mr. MURRAY. Well, I wish to thank you for that compliment, Senator. It is very nice of you. [Laughter.]

Senator ELLENDER. You and Mr. Reuther took different positions, and—

Mr. MURRAY (interposing). Let us not talk about Reuther and I. Let us talk about this legislation.

Senator ELLENDER. I wish you would, because up to this moment you have talked about something in the past.

Mr. MURRAY. Something in the past?

Senator ELLENDER. Yes.

Mr. MURRAY. Well, I am talking about something that is historic factually, Senator, that I hope will be helpful for the committee in resolving this question. I am going into a history which is not ancient. It is history that has occurred within the past 15 or 18 months. I am pointing to the record, the record of labor unions in the United States of America, and the answer that these labor unions are now getting for the splendid record which they attained in the course of the past 18 months and in the course of the war is vicious, definitely vicious legislation. There can be no question about that, and I propose to go into that with the members of this committee. The reward for a patriotic service to the Nation in the course of the war, and a true service to the Nation after the war, is some 250 bills—I don't know how many—each one of which offers some measure of inhibition, some measure of repression, some penalty prescribed that runs against labor. Labor must be punished for what? For what? For the record to which I have made reference? Is that why they should be punished? God Al-

mighty, what crime have these organizations to which I have referred committed, except to perform their patriotic duty as true Americans, a record of efficiency and productivity the which has never been approached anywhere in the world, even in the United States of America. Here, staring in the face of this committee today is a record of labor efficiency unparalleled at any time in the history of the United States, and there is thrust in their face certain forms and types of legislation designed to shatter them. Is that going to be their reward?

I say that the members of this committee must look at the record and look at it calmly and deliberately, and look at the facts, because American wage earners, gentlemen of this committee, are pretty much like you and I, and they do not like the thing that you propose to do.

Senator MORSE. I would like to have you discuss the legislation, and I think the committee is as much at fault as you are in not discussing the legislation in the first hour of this testimony. Now, I wish you would give me an answer to this question: Is it your position that, in view of the labor problem that exist in the country today, this Congress should pass no legislation whatsoever regulating the abuses by unions, or do you deny that there are any abuses?

Mr. MURRAY. I don't know what abuses you are referring to, Senator.

Senator MORSE. Well, let me give you one—and I think it is about time that the labor leaders of this country do something to assure the American people that this type of economic waste will be eliminated by the unions—and that is the jurisdictional strike. What justification can you give this committee for jurisdictional strikes, costing innocent parties tremendous economic losses each year? I would like to hear your justification of jurisdictional disputes, and what you propose to do about them.

Mr. MURRAY. Well, Senator, I am going to speak very calmly and deliberately about that issue to the members of this committee.

Senator MORSE. And I hope just as factually, as calmly and deliberately.

Mr. MURRAY. I am just as factual in this, Senator, as I am in regard to these other matters. There is no moral justification for a jurisdictional fight which forces into unemployment a lot of people. I am not going to attempt to justify it.

My own organization has not precipitated at any stage in its entire career jurisdictional fights against other unions that caused industrial disturbances.

I am definitely for some thinking being done to straighten it out.

Senator MORSE. I will give you an instance where the CIO precipitated one. There was that strike in my State which lasted from the last part of June until into along in December, and during that time not a ship left the port.

I proposed in that dispute that the White House appoint an arbitrator to settle the dispute. The A. F. of L. accepted and the CIO refused. Now, what is your explanation about that?

Mr. MURRAY. Well, I knew nothing about it. Had it been brought to me, I would have said then as I say now before this committee here today, that I would have accepted arbitration of that dispute.

May I say this to you, insofar as jurisdictional disputes are concerned: I offer your committee now a reasonable, workable solution of this problem.

Have this committee send for Mr. Green, of the American Federation of Labor. Bring him down here and let him and me work out an agreement on this jurisdictional question, in your presence.

I am prepared to do it, to set up all the necessary mediation and arbitration machinery that can be established and set up for the orderly adjudication of the jurisdictional issue.

Senator ELLENDER. Well, why do you want the committee to do that? Why not get together with himself and settle that question?

Mr. MURRAY. Let me say this to you, Senator, that I have made repeated attempts to get together with the American Federation of Labor on that issue.

Now, come on, let us perform a real public service on this issue. Get Willie Green down here and ask him if he is prepared to sit down with Phil Murray of the CIO. Select a committee of your own to sit with us, if you want to—it makes no difference to me. And let us work out an agreement to settle that issue right here.

Senator MORSE. You mean, you will enter into an agreement with Green that all jurisdictional disputes between the CIO and the A. F. of L.—every union in those two organizations—

Mr. MURRAY (interposing). Yes; or, intraunion, too.

Senator MORSE (continuing). Between you and the A. F. of L. will be—

Mr. MURRAY (interposing). Yes, Senator.

Senator MORSE (continuing). Will be settled by arbitration, and mediation, and conciliation machinery?

Mr. MURRAY. Yes, Senator.

Senator MORSE. And that settlement to become binding, a contract?

Mr. MURRAY. That is right.

Senator MORSE. Well, I would be perfectly willing to see you two gentlemen try it. Also, I would be willing, if we had the authority to require it, to require you two to enter into such agreement. I am perfectly willing to have your proposal given a try; and I would just like to see what the result of it would be, too.

But, would the result not be as it always is when you try to get together and enter into negotiations between yourselves on these matters? Would the result not be as in the past, unless we have some compulsion—unless there exists compulsion that will compel you two to enter into such an agreement?

Mr. MURRAY. You see, Senator, I don't know. I got a notion that may be rather old-fashioned, but I still think it is a pretty good formula. I got the idea that the American people are pretty much, pretty much against these forms of legislative compulsions.

I think it would be better, so long as the door is still open, there is still opportunity provided for a committee such as this to render a distinct public service by bringing in the interested parties together during the course of these hearings you are having, and letting them work out a mutually satisfactory arrangement.

Senator BALL. Well, now, Mr. Murray—

Mr. MURRAY. I am sure that that type of service—excuse me, Senator Ball—will be of greater benefit to this Nation than any form of compulsory legislation that this committee might put forward or dream up.

Senator ELLENDER. Mr. Murray, of course, you are assuming now that there are only two big unions in the field; but I understand there are a lot of independent unions.

Now, what is your objection if, as you say, you think jurisdictional strikes are bad and cannot be justified, to having something done about it? What is your objection to providing for it under the law? I just cannot follow you there, Mr. Murray.

Mr. MURRAY. Senator—

Senator ELLENDER (interposing). There is the opinion expressed that you and Mr. Green, both, take a negative attitude on the situation. That is, you both have the attitude that we do nothing.

Mr. MURRAY. Oh, well, you see, I know what you mean. I read the New York Times this morning and I understand that the position of some members of this committee was that Mr. Green took a negative attitude. I know about that.

Maybe he did, I don't know. But, at any rate, surely what I have proposed here, Senator, is not going to be construed as negative. You are not going to say that the position I take is negative.

Senator ELLENDER. Yes and no. You merely suggested—

Mr. MURRAY. My suggestion offers an affirmative solution.

Senator ELLENDER. You think it does?

Mr. MURRAY. Yes.

Senator ELLENDER. Yes, perhaps, but your suggestion is something that could not be made binding, and that is what I believe the American people want in an agreement between you and Mr. Green, that it be binding.

Mr. MURRAY. Oh, well—

Senator ELLENDER. What I should like for you to do, Mr. Murray—and I am serious about this, and I am sure you are, too—is to give us some help. You are, I am sure, going to find that this committee is going to do some legislating. In fact, I know they are going to do it. Now, what we want is your help in that legislating.

Mr. MURRAY. Am I not offering you help here?

Senator ELLENDER. Not much.

Mr. MURRAY. And is the only help that can be found in America for the solution of these problems legislation of a compulsory nature? Is that the only thing that we can think of? Is that what you say, Senator?

Senator ELLENDER. You say you are offering help. At the same time, you have said one time and another, "Don't touch the Wagner Act; don't do anything. We will settle the differences." You have said that, you know.

You will recall about the differences, when an effort was made in 1938 or 1939 to amend the Wagner Act. You took the position it should not be amended, and Mr. Green said it should be. And, in the end, Congress did not act.

Now, what I am asking you and what I am asking of Mr. Green is assistance in enacting legislation that will not be hurtful to labor. What we want is not a negative attitude, "Don't do nothing. You leave that legislation to us; we will attempt to cover it, to do it;" but we ask of you your help.

Mr. MURRAY. Now, Senator, you are asking me for assistance in drafting legislation that won't be helpful to labor. We will offer you that assistance.

Senator ELLENDER. You will what?

Mr. MURRAY. We will offer that assistance to you, Senator; but I doubt if you will accept it. It is a question.

SENATOR ELLENDER. We will accept some of it. How much, of course, I don't know.

MR. MURRAY. But the whole question revolves around what is the best thing to do to meet situations of this description, the best thing in the interest of the Nation and of all the people.

SENATOR ELLENDER. That is what we are after.

MR. MURRAY. Do you serve the best interest of the Nation by providing provocative legislation that creates a state of apprehension and of distrust in the duly-accredited bodies such as the Congress of the United States?

Or do you wish to accept constructive, sensible advice designed to bring the people together on a common ground of understanding of a mutually satisfactory nature?

I think that this committee—this committee—would be hailed by the American people if it could evolve a workable program, particularly upon this jurisdictional question to which Senator Morse directs my attention—a workable, practical, realistic program in the nature of an agreement between Mr. Green and me, thereby obviating the need for legislative compulsion.

SENATOR MORSE. Could I ask another question?

SENATOR BALL. Senator Morse has another question for you, Mr. Murray.

SENATOR MORSE. First, I want to say, Mr. Chairman, that I think out of fairness to Mr. Green that we should let Mr. Green know of Mr. Murray's unilateral statement this morning on matters involving Mr. Green. I think Mr. Green should be given an opportunity by this committee to answer the position taken by Mr. Murray. I think that is only fair for this committee to do.

I, for one, would be willing, perfectly willing, too, that this committee try to work out such an agreement. I make that statement preliminarily to the question I now want to put to Mr. Murray.

Assume, Mr. Murray, as has been so often the case in the past, that you will not be able to work out a satisfactory agreement between your two great labor organizations in this country. As you know, in the War Labor Board, particularly during the early days of the war, we started having these serious jurisdictional disputes and I proposed a resolution aimed at those disputes, to the end that if you and Mr. Green could not settle a jurisdictional dispute within 24 hours, we would appoint an arbitration board that would make a decision that would become final and binding.

You gentlemen did not like that; you said it put too much force into the hands of the Government; and you know I said I was only concerned with the war effort and that we would have satisfactory settlements of jurisdictional disputes—or, better, I said we would have no jurisdictional disputes.

I will say this, to be fair to you, that once you went in to cooperate, you did cooperate in good manner, and I think the record ought to show that you did.

But, to get back to my question. Assuming that you cannot reach an agreement to arbitrate these matters between yourself and Mr. Green, or between your two great organizations, assuming that, then ought we not to legislate something that would stand as binding legislation upon jurisdictional disputes, something whereby we can

compel them to accept a decision from this Government in settlement of these jurisdictional disputes?

MR. MURRAY. Well, again, Senator, I say: Ask Mr. Green to come over here and let him and me tackle this problem. If we fail, call us back here.

SENATOR BALL. May I ask you about one type of jurisdictional dispute for which I think there is machinery for settlement; in other words, where two unions claim bargaining rights, and one or the other strikes rather than call for a National Labor Relations Board election? Don't you think there is machinery in the Wagner Act that is adequate to solve that type of jurisdictional strike, and that it should be prohibited by Congress?

MR. MURRAY. Well, I can't follow your question there, Senator Ball. I am perhaps a little naive, but let's see.

SENATOR BALL. If that was the plain situation, don't you think—

MR. MURRAY (interposing). If Mr. Green were brought down here and you posed those questions to the both of us, whatever those questions may be—suppose, with regard to these jurisdictional issues, you say, "Gentlemen, can you contrive out of your reason, out of your mind, a mutually satisfactory agreement?"—

SENATOR BALL (interposing). Now, wait a minute—

MR. MURRAY (continuing). "Dealing with all cases of jurisdictional differences"——

SENATOR BALL. Just hold on, Mr. Murray. I am talking about just one type of jurisdictional dispute; that is, a dispute over bargaining rights, where two rival unions claim those bargaining rights, where each claims a majority and yet neither is willing to submit to an election to see which has the majority. There the employer is in the middle, and the public is in the middle.

MR. MURRAY. My own union, Senator, as far as I know, has respected the outcome of national labor elections.

SENATOR BALL. But, don't you think, where a union refuses to submit its claims to a democratic election, it should be prevented by law from resorting to what might be termed nothing but force?

MR. MURRAY. I should like to probe that, Senator, and look into it, because I do not know how deep it goes, how far it goes. I cannot fathom the depths of your question; but, certainly, as far as I know—as far as I know—my own organization has respected the decisions of the National Labor Relations Board elections.

SENATOR BALL. Well, but there have been a number of strikes upon——

MR. MURRAY (interposing). Oh, yes, there may have been.

SENATOR BALL. Yes.

MR. MURRAY. And, of them I can't say I have an awareness, I know nothing of them. So, as far as your question is concerned, it is hypothetical in nature, in that I have not been afflicted with that particular type of complaint.

Now, I should be delighted, on the basis of the entire jurisdictional question, to thrash those matters out with Mr. Green and pose the answers—present the answers to your committee.

SENATOR BALL. Proceed, Mr. Murray.

SENATOR ELLENDER. Wait, first. Mr. Murray, you said something about jurisdictional strikes. How about secondary boycotts?

Mr. MURRAY. Well, my union, of course, is——

Senator ELLENDER. You do not approve of it?

Mr. MURRAY. My union is not concerned in that.

Senator ELLENDER. Well, do you have a suggestion as to how that issue be resolved?

Mr. MURRAY. Well, much depends upon—that is another type of jurisdictional situation.

Senator ELLENDER. I understand.

Mr. MURRAY. To which I think these two organizations—now, I am dealing with the broad phases of this entire jurisdictional dispute, and believe you me, I have no sympathy and never have had throughout my life, for jurisdictional disputes. I am, therefore, prepared, as I have already pointed out and stated, to enter into, in the course of these hearings, discussions with Mr. Green, conferences and discussion that might lead toward an over-all agreement settling once and for all these jurisdictional questions through the process of orderly mediation and arbitration.

Senator ELLENDER. Now, suppose——

Senator BALL (simultaneously). Mr. Murray——

Senator ELLENDER. You go ahead.

Senator BALL. Mr. Murray, in connection with that, I hardly think it is the function of this committee to mediate intra-union disputes.

Mr. MURRAY. I am not asking you to do that.

Senator ELLENDER. Or interunion.

Senator BALL. But, the committee will communicate your proposition to Mr. Green and ask him if he cares to submit an answer for the record.

Mr. MURRAY. Thank you, Senator.

Senator IVES. Mr. Chairman.

Senator BALL. Senator Ives.

Senator IVES. Do I gather from what you say that you would be willing to sit down and discuss all questions of legislation pertaining to industrial and labor relations between yourselves in the same manner and by the same process as you have indicated in connection with jurisdictional disputes?

Mr. MURRAY. Well, now, Senator, you are putting me in a fog at that juncture. I am confining my remarks to a question that was posed here by Senator Morse, dealing particularly with jurisdictional questions.

Senator IVES. What I am driving at is simply this. I think you will probably agree with me that the chances are that our statutes are not so perfect but that they might be improved. I think you will agree on that, that we have not yet reached the stage of utter perfection.

Mr. MURRAY. You are never going to, Senator.

Senator IVES. Well, we can still try.

Mr. MURRAY. Oh, yes, yes. Yes, you can try.

Senator IVES. And, this also I think you will agree with me about, that the public are demanding some things. I think you will admit from your own observation that the public are demanding action on some certain matters which have become serious and which have got to be given serious consideration.

I would like to ask you, in view of these serious questions that are being gone into, these matters that the public are demanding consider-

ation upon—I don't know that a public gathering like this is an ideal place to try to settle these questions—but would you be willing, and I am asking you personally—never mind anybody else—would you be willing to sit down and consider some of these questions that probably will have to be answered before we are through?

Mr. MURRAY. I have always been prepared to sit down and consider anything, Mr. Senator.

Senator IVES. And, you would have no objection whatever to the Wagner Act being—

Mr. MURRAY (interposing). Oh, now, now, wait.

Senator IVES. Let me finish my question. You would have no objection to an amendment that would in no way deprive labor of its rights. Is that right?

Mr. MURRAY. I would have no objection to doing anything of a constructive nature that would be beneficial to the workers of this Nation.

Senator IVES. Even though it involved legislation?

Mr. MURRAY. Now, let me pose this situation, see? I know I am experiencing a great deal of difficulty in making myself understood.

I am a defender of labor. I make no pretense about that, I am a defender of the rights of labor in the United States—that is, the group that I am privileged to represent. And, frankly, I suppose I am a partial defender of those interests. I make no pretense about not being that type of an individual.

But, when we give consideration to that over-all legislative program that is now before this committee, I am constrained to believe that the committee could very well divert its attention to: No. 1, to the splendid record achieved by labor since VJ-day and in the course of the war—to some of its good attributes. These Americans that produced the materials essential to the welfare of our economy here in the United States, they should be considered. There should be attention given to the over-all aspects of our entire national economy and to what sort of a contribution labor has made in that direction, in the course of the past few years, during the war and following the war.

I think there should be an analysis made of that. The finger should not be directed against labor because of the good record it has made.

Now, I do not suppose that I am transgressing the prerogatives of an ordinary citizen when I suggest that—and I do not do this with prejudice in my heart—that we give some consideration, yes, through this committee, to the other side of this picture.

You know, it is this not considering that causes a lot of this trouble, that creates a lot of this misunderstanding and confusion.

It is true that my own organization and other labor organizations in the United States have been subjected to a great deal of criticism in the course of the past few months over the wage situation. I do not suppose it is the function of your committee to pass upon what is a good wage, a bad wage, a high wage, or a low wage, but certainly it might very well be a proper matter of consideration at that, because of the wage situation's relationship to the causes of many of the disturbances that we have in labor-management relations in the United States.

What is the status of an American worker today as against that of April 1945, his status as a citizen—he who eats and has to eat to live?

I am not pointing to a CIO record or to a CIO statistic at this committee, but I am pointing out a factor, or pointing up a factor that must necessarily be considered as something that oftentimes leads to industrial disturbances.

In April 1945 the average weekly earnings of workers employed in the steel industry was \$56.32. In October 1945 the average weekly earnings of workers employed in that industry was \$46.22. In February of 1946 the wages were increased 18½ cents.

And as of today—as of today—the worth of the earnings when that 18½ cents is given consideration is \$6 a week less than they were in April of 1945.

Now, perhaps the members of this committee will say, "Oh, well, that has no relationship to legislation. Why should that trouble a Senate committee?"

That troubles a woman and it troubles a child and it troubles a man who works for a living, to know that his status as a citizen has been lowered in the process from April 1945 up until now.

But, mark you my word, gentlemen, the most provocative situation that you have in the United States of America today is not these allegedly bad labor-management relationships, not by any means. Let us put our heart and our soul and our mind and our finger right squarely on where this problem is, and what causes and creates these dissensions and this so-called high cost of living.

Senator ELLENDER. Well, Mr. Murray, what are you going to do—

Mr. MURRAY. Mr. Chairman, I should like, with your permission—with your permission—it will only take me a few minutes to set forth a few of these pertinent figures.

Senator BALL. Proceed.

Mr. MURRAY. Because I do think they bear some relationship to the issues; and, unfortunately for the Nation, scant attention is being given the matter by the Federal Congress.

In 1936–39, the period which was used as a yardstick by the National War Labor Board and other Federal agencies in the course of the war, the net profit of the United States Steel Corp., which was assumed to be reasonably fair, was \$44,700,000. In 1945 it was \$58,000,000; in 1946 it was \$88,000,000.

For Republic, \$5,300,000 in 1936–39; 1945, \$9,450,000; 1946, \$16,000,000.

For Jones & Laughlin, \$1,600,000 in 1936–39; 1945, \$8,000,000; 1946, \$10,555,000.

And, that is only one industry. That symbolizes the trend.

Now, the net worth of American wage earners in the steel industry dropped from \$56 to a figure approximating \$50 in a period of a year. The net profit of the employers in that same industry was going up 2½ times higher, higher than it was in 1945.

I do not know where my statisticians are. There is somebody back there [indicating] that has got a picture of it, figures on foodstuffs. Will you bring them over? I have not got them here. But I have got a list of the corporate profits of food corporations in the United States for the years 1945, 1946, 1936–39. Where are they?

(Papers were handed the witness.)

There is the most startling revelation that has ever transpired in the history of this Nation with relation to foods. And we wonder oftentimes about this unrest—

Senator BALL. Mr. Murray, are you arguing that, with a national income of around \$170,000,000,000, profits should remain at the same level they were in 1936 to 1939, when there was a national income of around \$60,000,000,000 to \$70,000,000,000?

Mr. MURRAY. No, Senator; I am not arguing that. Let me show you what I am arguing. No; I am not arguing that. Don't misunderstand me.

Senator BALL. Then, Mr. Murray, what relationship do these figures—

Mr. MURRAY. All right. If you take time, Senator—just a little bit of time, you don't have to take too much—to probe the relationships that these figures bear to the things that you are having under consideration here now, see, perhaps your finger will also be pointed in another direction with regard to our economy.

Is there any moral justification for the Continental Baking Co.'s having an increase in its profits picture of 201.3 percent in 1946 over 1945?

Senator BALL. I don't know; I don't know. But, I will ask you, is that before or after—

Mr. MURRAY. That is it, Senator. You just said, "I don't know." Well, that is the trouble. That is our difficulty—it is that you do not know.

Senator BALL. Oh, Mr. Murray, now, you know you can quote statistics here for the rest of the time that we have—

Mr. MURRAY. And, evidently, you are not going to listen.

Senator BALL. And unless, as you know, unless you take into consideration everything behind those statistics—

Mr. MURRAY. And that we are doing.

Senator BALL. And know the specific situation with reference to the particular corporation statistics you are starting to cite, why, the statistics do not mean a thing, and they do not prove anything.

Mr. MURRAY. They don't?

Senator BALL. No.

Mr. MURRAY. Is there any harm, therefore, Senator, in a representative of labor appearing before a committee which has under consideration certain types of repressive, unfair labor legislation, and asking that same committee to probe these facts and find out whether Phil Murray is engaging himself in diabolical pursuits when he is presenting these facts to this committee?

Senator BALL. May I point out, Mr. Murray, that the committee, under the rules of the Senate, has no jurisdiction over that? This committee has no jurisdiction over that subject. Our field is labor relations, not costs. That subject of costs is properly in Currency and Banking or in the Finance Committee.

Mr. MURRAY. All right. So, you don't want to know anything about this; is that right?

Senator BALL. It is not before this committee.

Senator Ives. That profit figure you quoted—was that before taxes or after?

Mr. MURRAY. That profit, as I understand it, was after taxes, I think.

Senator Ives. I am asking if you know that it was after taxes.

Mr. MURRAY (after short consultation with member of his staff). After taxes.

Senator IVES. There is a difference, and the main difference there in the Continental Baking Co.—

Mr. MURRAY. All right, now Senator, let me follow through on these food corporations.

Senator IVES. Oh, go ahead.

Mr. MURRAY. It won't take me a minute. It may be, as Senator Ball says, that your committee might not have jurisdiction over it. But you have jurisdiction of that, as you are the United States Senate, and you have a direct responsibility to the American people for these things—to make known to the American people these facts—and they ought to be probed by the Senate, because rape is being perpetuated upon the American people in this profit picture, and I think it is the business of the Senate of the United States to look into it—and, it does bear a distinct and direct relationship to the issues that this committee has before it.

It shows the lopsided, unfair, discriminatory maldistribution of the national wealth—and if anything can provoke unrest, it is that. And it is something, too, which this committee should naturally discuss; this is, particularly, to find out what the essence of our national economic difficulties is.

United Biscuit—food, women and children again—a profit increase of 205 percent in its net profits picture in 1946 over 1945.

Senator IVES. Mr. Murray, that again goes to variations in the tax structure. It is a matter where—

Mr. MURRAY (interposing). I don't care what it is due to. I am talking about profits, now.

Senator IVES. I am talking about profits, too, but—

Mr. MURRAY (interposing). All right, Senator. Don't you think it would be wise for this committee to investigate these things and find out what it is due to—whether it is taxes or not?

Senator IVES. That is primarily profit before taxes; then you want to have consideration of that. How about considering after taxes? Do you want to consider—

Mr. MURRAY (interposing). All right. I am merely presenting some facts in relation to this profits picture that I think ought to be investigated by the United States Senate.

The CHAIRMAN. Mr. Murray, let me ask you this question about the broad, over-all concept of your statement. You say in the prepared testimony:

The President has estimated corporation profits for 1946, the first full peacetime year, at \$12,000,000,000.

Now, is that before taxes or after taxes?

Mr. MURRAY (after short consultation with member of his staff). After taxes, Senator.

The CHAIRMAN. Take the next sentence:

This is approximately \$2,000,000,000 higher than the highest peacetime year. For 1947 estimated profits before taxes for all manufacturing corporations are \$15,500,000,000.

That says "before taxes." I figure that means that the corporations would have, after taxes, about \$9,000,000,000.

Mr. MURRAY. Well, yes; yes, sir.

The CHAIRMAN. Out of a total national income of about \$165,000,000,000; so that, even if that figure is not reduced, it is only about 6 percent of the national income.

Mr. MURRAY. No, no.

The CHAIRMAN. And, squeezed down, it comes to about 2 or 3 percent. Now——

Mr. MURRAY. Please, be a little more discerning. The President of the United States was dealing with a figure, an over-all figure of 12 billion—\$12,900,000,000—for the year 1946.

The CHAIRMAN. I am referring now to 1947.

Mr. MURRAY. 1947 deals exclusively with manufacturing. Now, in your discernment, just make that distinction.

The CHAIRMAN. In your statement——

Mr. MURRAY. It deals exclusively with manufacturing.

The CHAIRMAN. Then, suppose we take the figure of 12 billion. With your national income of about 165 billions, that is about 8 percent.

Now, if you take away 3 percent and give it to the workmen, that still does not justify, does it, such things as, for instance, a 30-percent increase that you demanded last year? You cannot make, can you, a 30-percent increase out of a 3-percent cut in corporation profits; can you?

Mr. MURRAY. Senator, Senator, again you are a little bit in error on your figures. It was not 30 percent, it was 22 percent. It was 25 cents an hour increase, the equivalent of 22 percent, that was given the industry.

The CHAIRMAN. The over-all demand, if I remember and according to my recollection, was a 30-percent CIO demand. It was a CIO demand for 30-percent increase to make up for reduction in hours from 52 hours to 40 hours. Is that correct?

Mr. MURRAY. Well, no. We are just being a little mischievous with figures, Senator.

The CHAIRMAN. I think it was that, distinctly.

Mr. MURRAY. It wasn't an over-all CIO demand of 30 percent. There was a variation of demands.

The CHAIRMAN. Mr. Murray, do you mean to say that the CIO did not make a general demand for 30-percent increase, so they could get the same pay for 40 hours of work as they got before? You say now you did not make that general demand?

Mr. MURRAY. Now, just a minute, Senator; just a minute. The CIO did not make a 30-percent demand. The CIO demanded, as a matter of labor policy, a restoration of the earnings of the workers, who were dropped from the 48-hour-or-more week to the 40-hour week.

Now, in some instances that may have amounted to 30 percent; that is true. In others, it may have been much less than in the steel industry. We made a demand, and in each industry we made a separate demand.

In the steel industry, as an example, it was 22 percent; in some other industries, 26 percent; and in some other industries, it was 19 percent, depending wholly upon the type of wage scale prevailing in that particular industry at the time the demand was made.

But the restoration of the weekly earnings was predicated upon the assumption that the wage earners had lost a certain amount of

money weekly when they were cut back and lost their overtime and taken from the 48-hour week to the 40-hour week.

The CHAIRMAN. But that does not get away from the general import of this corporation proposition you have brought up, does it, if your figures are correctly given—and I assume that they are?

The corporation profits amount to 8½ percent of the total national income. I do not see how that can materially change, if they go up some or down some, the living standards of the American people, if we have a total national income of 165 billions of dollars. That means 9 percent or 8½ percent. Supposing we took off half of that and gave you that, the 4 percent, to the workers—maybe that should be done, maybe it should not—but, I cannot see its over-all, vital effect—the way you do—on the living standards of the United States.

Mr. MURRAY. Well, it is a subject matter that is well worth looking into, Senator.

The CHAIRMAN. I quite agree: I agree entirely, sir.

Mr. MURRAY. And that is the only point I am trying to make, that—I was speaking in your absence.

The CHAIRMAN. Yes. I was absent. I read your general statement.

Mr. MURRAY. In your absence, I had pointed up to the members of this committee some of the situations that provoke and create these disturbances. I pointed up the net loss that workers have suffered since April 1945, since then to 1946—the net loss.

The CHAIRMAN. Now, don't you think that, on the whole, those corporation profits should be brought down through the force of competition—I agree with you on your anti-monopoly statement—to the point where the prices come down and thereby help everybody, instead of leading to an increase in wages?

Mr. MURRAY. Well, if an increase in wages is economically possible, by so doing you are going to elevate the standards of some poor fellow and his wife and family.

The CHAIRMAN. Is it not better to reduce corporation profits by reducing prices, so that everybody is helped, and not just the employees in a particular favored industry where profits happen to be high?

Mr. MURRAY. That is a subject matter that is extremely vague, Mr. Senator.

The CHAIRMAN. It certainly is.

Mr. MURRAY. And I suppose you and I might hire a hall and debate or argue it. But certainly no opportunity is offered here to probe the depths of that question which you are posing here.

What I am pointing up, Senator, is the real facts about some certain food companies.

Senator MORSE. Mr. Chairman.

The CHAIRMAN. Senator Morse.

Senator MORSE. I should suggest—

Mr. MURRAY. Shall I, then, before going into anything further, present this?

Senator MORSE. That was the suggestion that I was just about to make, preliminarily to the question I want to ask. I think it is well for you to point out the profit situation in America, and to say that that should be recognized as a legitimate purpose of the labor movement—this question of the distribution of profits. And I agree that

the Senate should go into the distribution of the national wealth of this country, to see to it that it may be distributed over 140,000,000 people, rather than having it concentrated in a few great monopolies. No doubt it is something that this committee should give heed to, as part of the over-all labor picture.

I think it is legitimate, and I want to protect the legitimate purposes of the labor movement. Now, what I would like to have you do is to direct yourself to some of these other things. I would like to have your opinions, your views, on them, so that we can better protect the legitimate purposes of the labor movement.

I am not ignorant of the fact, and I do not think you are either, that in America today, rightly or wrongly, public opinion is saying to the Congress of the United States: "There are some labor abuses that have got to be checked by labor legislation, because labor has not checked them itself."

Now, you have given us your views on jurisdictional disputes. I should like to have your view on whether or not legislation should be passed which would be effective as to the secondary boycott.

What do you want to do about secondary boycotts?

The CHAIRMAN. Mr. Murray, before you answer that, I will see that the best economists available will analyze all the figures upon hours and wages and profits, and so forth; and the arguments you present will certainly be given every consideration.

Mr. MURRAY. Thank you.

The CHAIRMAN. Now, if you will answer Senator Morse's question about secondary boycotts.

Mr. MURRAY. Well, I will say, as I have already said to the Senators here, that my own organizations are not troubled with boycotts.

Senator BALL. We are troubled, though.

Mr. MURRAY. As far as I know, no CIO organization is plagued or troubled with boycotting.

Senator JENNER. Victims of boycotts?

Mr. MURRAY. How was that?

Senator BALL. He means some of your unions are victims.

Mr. MURRAY. Well, I mean, they may be the victims, but I am talking about a matter of CIO policy. We do not engage ourselves in boycotting on any question.

Now, I have endeavored to explain to the committee here that the boycott, as I understand it, and perhaps I am wrong and I should like to be straightened out if I am, is an instrument that is used for the capture of membership in jurisdictional affrays between unions.

I think Senator Ball raised that question with me a few minutes ago and I suggested to him that, in conjunction with the over-all jurisdictional question, including the secondary boycott, so-called, that I would be delighted to sit down with Mr. Green and work out something with him, while this committee is conducting its hearings; work out an agreement that I think can be approved by all the people of the United States, thereby obviating the necessity of legislation.

Senator MORSE. And what procedure would there be in your agreement with regard to those independent unions that are not in fact company-dominated?

Mr. MURRAY. Well, I think they are entitled to their rights under the fullest protection afforded under such an agreement. Certainly,

I could offer no objection to having them become a party to any arrangement we had.

Senator MORSE. One more question. I am sorry, Mr. Chairman, I am asking so many questions, I know. I have one more which I think goes to the heart of it, as far as I am concerned.

The CHAIRMAN. Proceed.

Senator MORSE. What, if any, amendments to the Wagner Act, Mr. Murray, do you propose to favor?

Mr. MURRAY. Well, what amendments do you have under consideration?

Senator MORSE. I have an amendment under consideration with regard to employers when any question arises as to freedom of speech, when it comes to discussing labor problems with their employees. Have you any objection to that?

Mr. MURRAY. Well, they exercise that right now.

Senator MORSE. They do?

Mr. MURRAY. Yes.

Senator MORSE. Well, they seem to have some doubt about it, from what we can gather from industry representatives we have had here.

Mr. MURRAY. There can be no doubt about it, under the Wagner Act as it stands now, in my opinion.

Senator MORSE. Well, do you object to having an amendment in clear language assuring them of that right?

Mr. MURRAY. I do not think that the act requires an amendment for a thing that exists under it now, the right of an employer to express his convictions on these matters. He is doing it repeatedly, and the National Labor Relations Board has repeatedly sustained his right.

Senator MORSE. And, frequently penalized him for the exercise of it.

Mr. MURRAY. No, I should not say so. Only when they resort to practices that are diabolical in nature and which comprehend a violation of the act—punishments, discharges, and matters of that description that were used and were put into use before the Wagner Act came into being.

Senator MORSE. Well, in the Thompson Products case, where there was a decision in the court on Mr. Crawford, I think you will find that the court gave a different decision from the Board on the question of freedom of speech.

Mr. MURRAY. Well, I have not given that any legal analysis, because I can't, to the case to which you make reference.

Senator MORSE. Well, the Thompson case really establishes the right of free speech for the employer. But, it is not a right that is established in the act. I am concerned with removing any doubt about it, by a simple amendment to the act. Would you object to that?

Mr. MURRAY. Well, the question arises, Senator, as to whether there should be any doubt or not. Certainly, we have advised our people. The CIO has advised our people by a circular letter that there shall be expression of opinion. We have done that; the CIO has.

Senator MORSE. What about an amendment to the Wagner Act calling for hearings and recourse, if necessary, to courts upon unfair labor practices or possible intimidation with regard to establishing closed shops?

Mr. MURRAY. Well, of course, you mean there the right of a union to strike over the question of a closed shop?

Senator MORSE. The right of an employer to have a hearing on whether or not the union is using unfair methods of accomplishing a closed shop.

Mr. MURRAY. Well, I don't know, Senator, of any case such as you have in mind, where—unless—unless it is something in which an employer deliberately and with malice in mind seeks to actually set aside the provisions of the Wagner Act by using the power of discharge and discrimination against an individual because of activities in matters affecting the union.

Senator MORSE. Well, I have in mind this: There are, I think, two types of closed-shop contracts. There is one which is voluntarily entered into because the parties, both parties involved, want it. Then, there are those in which the union leader himself says to the employer, giving that employer no assurance that even a corporal's guard belonging to that union is even in that plant, "Sign here—or else;" and, if he does not sign, that employer has a picket line there next morning.

Now, I take the position that such practices are not for the long-time benefit of labor. Why shouldn't that employer have an opportunity to have his complaint heard, if it is a matter of intimidation?

Mr. MURRAY. Well, much depends on the causes, Senator Morse. I cannot begin to say. It is the over-all situation—the over-all situation.

Now, I have no trouble about these matters. I say that truthfully. There has not been a single member or a single employee in the steel industry that has been deprived of his employment because of non-payment of his dues to our union.

Senator MORSE. Well, my point——

Mr. MURRAY. Although we have maintenance of membership in our contracts now. There we exercise a free collective bargaining. We have a mutual agreement and no punishments are inflicted.

As a matter of fact, under our maintenance of membership arrangements, we have a 15-day clause which gives to the individual, at the end of each contract period, the right to withdraw from the organization.

Senator MORSE. I know that.

Mr. MURRAY. Yes, and that is right.

Senator MORSE. But, the point I want to make, Mr. Murray, is this: If you are not concerned with any of those abuses, if none of them exist within your union, then why are you concerned about an amendment to the Wagner Act which says that if such abuses do arise in a given case, then the employer ought to have a legal remedy to protect himself against them?

Mr. MURRAY. I should like, Senator Morse, to have a little time to analyze the question you pose here, because of its ramifications. I am not in a position to answer it right now; I am not in that position.

If you are raising the question of the closed shop by itself, then I must express my personal convictions with regard to that situation.

Senator MORSE. I would like to have them.

Mr. MURRAY. And that is, the right, the positive right, of the employer and the union involved in these proceedings to enter into a mutually satisfactory collective-bargaining contract containing the closed shop, should be maintained.

Senator MORSE. With which I am in full agreement.

Mr. MURRAY. Yes.

Senator MORSE. My only worry was upon this possibility of intimidation.

Mr. MURRAY. Now, as to the right of a union to strike over that issue, I do not think—and I say this advisedly—that the Congress of the United States can give serious consideration to the enactment of legislation which comprehends the restraining of the union from engaging itself in a strike for the purpose of having a closed shop. I think that legislation is very bad legislation. Because that is a two-way street. It can operate in many other directions.

And when we get into the field of restrictive legislation of that character, legislation which directs itself against labor, then this Congress is paving the way for a system of national totalitarianism and many other bad things. It endangers the structure of our whole system of free enterprise in the United States.

Senator BALL. Are you, in effect, saying that the open shop is totalitarian?

Mr. MURRAY. What?

Senator BALL. You say the open shop is totalitarian?

Mr. MURRAY. I am not talking about the open shop, nor about anything else, Senator, than the closed shop. That is what I am talking about.

Senator BALL. Well, I gather, if, as you say, the closed shop is the free shop, then the open shop is the totalitarian shop. Is that your meaning?

Mr. MURRAY. I think it is extremely dangerous to deprive the employer and the union of their God-given rights.

Senator BALL. How about the individual rights of the worker? Aren't you going to give him some rights and some freedom?

Mr. MURRAY. The individual worker exercises his rights under this arrangement.

Senator BALL. Oh, sure, yes. He can starve.

Mr. MURRAY. No, he won't starve. I can never conceive of anyone starving under those arrangements, Senator.

Senator BALL. Well, we are a pretty humane country, Mr. Murray. We don't let them starve, even if you would.

Mr. MURRAY. It is not a question of starving.

Senator BALL. But, it is a question of getting work. They can't get work if you have a closed shop and they don't go along with you.

Mr. MURRAY. Now, again, I suppose you are more expert in that field than I am, so—

Senator BALL. I want your view.

Mr. MURRAY. All I do, Senator, is live with the people, very close to them, out in the plants and in the factories.

Senator BALL. Yes?

Mr. MURRAY. Believe you me, I do. And I think that you have pushed that issue to a point which in the estimation of the majority of the workers in the American industry is certainly ridiculous—it is certainly ridiculous.

Senator BALL. Now you speak for the majority of the workers.

Mr. MURRAY. Yes; for our organizations.

Senator BALL. Well, have you ever taken a poll among your employees?

Mr. MURRAY. Repeatedly. You mean on closed shop?

Senator BALL. Yes.

Mr. MURRAY. Repeatedly.

Senator BALL. A secret-ballot poll?

Mr. MURRAY. Repeatedly.

Senator BALL. I would like to see it.

Mr. MURRAY. And not only the closed shop.

Senator BALL. And yet, we have some poll such as the Gallup poll, which shows a contrary finding. The Gallup poll shows a majority says other than you are saying.

Mr. MURRAY. Unfortunately for you and me, Mr. Gallup has not worked in any of these factories.

Senator BALL. Those polls have proved to be fairly accurate, you know.

Mr. MURRAY. Well, they have and they have not, Senator. It is a matter of opinion. I do not think the Senate committee wants Gallup to determine these issues.

Senator BALL. You are concerned with the rights of the employees on the closed shop question?

Mr. MURRAY. I am concerned with the right of people to live their own lives in the United States.

Senator BALL. So am I.

Mr. MURRAY. Without chains and bonds and shackles around their necks and ankles.

Senator BALL. And the right to belong or not belong, if and as they see fit.

Mr. MURRAY. No shackles. That is what concerns me. And, it concerns me when you say something about putting in some legislation, when you meditate enacting certain type of legislation.

Senator BALL. Do you mean that outlawing compulsory membership in a union is putting shackles on a worker?

Mr. MURRAY. Oh, Senator, you are carrying your reasoning far afield. I simply cannot follow your peregrinations, they seem so far away.

Senator BALL. I give up.

The CHAIRMAN. Mr. Murray, I assume you read the memorandum submitted by Mr. Pressman in behalf of the CIO, and that you agree with all the statements contained therein, in detail, on these various matters.

Mr. MURRAY. Well, I have gone over them with my general counsel and associates, yes, and I am in agreement with that.

The CHAIRMAN. Then, I take it you are opposed to every provision in every bill which is before this Congress now.

Mr. MURRAY. Well, Senator—

The CHAIRMAN. I have read this, and I cannot find any provision in S. 55, S. 105, S. 133, or S. 360 but which is opposed by or argued against by Mr. Pressman. Is that your situation?

Mr. MURRAY. I suppose, Senator, it would be just as reasonable for me to say that you are against all the reasoning that we have set forth in our papers.

The CHAIRMAN. I am not arguing with you now. I am only asking you if that is so. I do not have and cannot have time to go into the details of that statement, so I can only ask you.

Is there any provision in any of these bills of which you approve?

Mr. MURRAY. There are certain provisions of the bills to which I have made reference and I told Senator Ball and Senator Morse I am prepared to sit down and discuss those matters with Mr. Green of the American Federation.

What is said in the legal analysis of the bills that you now have in your hand, I am in perfect agreement with.

The CHAIRMAN. What you mean is that you might be willing to compromise the legal reasoning for some practical purpose; I mean, to get some practical results. Is that it?

Mr. MURRAY. Well, you see, as a very ordinary sort of fellow, Senator, I think that the thing I am trying to do before the members of this committee is to help. Now, it may be you disagree with me about that; but, in good conscience, I am presenting to you my own convictions regarding these several legislative situations that you have before you, believing and hoping that they will be of help to the members of your committee in arriving at a determination.

The CHAIRMAN. I was only trying to get a summary because I am afraid we are going to have to stop in a few minutes, since the Senate goes into session.

Do you wish more time, some other day?

Mr. MURRAY. I am at the mercy of your committee, Senator.

The CHAIRMAN. Well, we are satisfied you can take care of yourself.

Mr. MURRAY. I am ready to accept your summons any time. If I have not given you enough today and you want a little more tomorrow, I will come back.

The CHAIRMAN. Thank you.

Senator BALL. May I ask another question?

The CHAIRMAN. Certainly, Senator Ball. We shall have to stop in a very few minutes.

Senator BALL. As I read your statement, you make quite a point, Mr. Murray, of your opposition to the monopoly that exists among corporations: their monopoly powers, and so on.

Mr. MURRAY. Yes.

Senator BALL. Do you regard the situation in your own industry fair, wherein one union, however democratically run, controls the total labor supply available for that industry? Take soft coal, or hard coal, where one union controls the total labor supply. Do you think that the control of that labor supply is monopolistic?

Mr. MURRAY. Well, Senator, you are asking me: Do I regard my situation in steel, my big union in steel, as a monopoly. Is that correct?

Senator BALL. That is right.

Mr. MURRAY. I do not.

Senator BALL. You do not.

Mr. MURRAY. No; because we do not control the labor supply; we don't do that. We simply don't do it. There are certain managerial prerogatives enjoyed by the steel industry—the right to hire. A man does not have to be a member of the union to get employment in the steel industry.

Senator BALL. Well, don't you think I am right when I say that when your union shut down virtually every basic steel and fabricating plant in the country, it was a demonstration of pretty complete monopoly over the labor supply there in that industry?

Mr. MURRAY. No; I don't think so, because that developed out of a referendum vote, a secret ballot.

Senator BALL. Well, I mean a monopoly is a monopoly, no matter how you operate. It is still a monopoly, regardless of the means of control.

Mr. MURRAY. Well, I differ with you when you charge we have a monopoly in the steel union. We don't. We certainly do not, and we don't pretend to have a monopoly—and we do not want a monopoly.

The CHAIRMAN. Well, Mr. Murray, haven't you demanded, didn't I read in the papers that the demands made this year by the steelworkers include demands for a union shop?

Mr. MURRAY. Oh, yes.

The CHAIRMAN. "Oh, yes"?

Mr. MURRAY. Oh, yes. Is that unlawful?

The CHAIRMAN. No; but, you were saying that you did not have—

Mr. MURRAY. Oh, I would be delighted to have it, and I would like to reason it out in the field of collective bargaining with the employer. My God, I think, perhaps, Senator, if you were chairman of the board of the steel corporation, you might give it to us, for good, sound, practical reasons.

The CHAIRMAN. Well, I would listen to you, certainly, all right.

Mr. MURRAY. Well, I should hope your vision isn't overnarrow in those matters. You see—

The CHAIRMAN. But you were saying it was not a monopoly; you didn't have a closed shop. I was merely pointing out that you were demanding now a closed shop, that is all.

Mr. MURRAY. No; I am not demanding a monopoly. If you think that a demand in a wage conference for a union shop is a demand for monopoly, forget it, because it isn't. It isn't.

The CHAIRMAN. Senator Morse.

Senator MORSE. As one member of the committee, I would like to make this suggestion, if it meets with the approval of the chairman.

I would like to go into this material very carefully, with the understanding that Mr. Murray will be subject to recall by this committee; because, after all, we have not gone very far into the specific considerations involved in the pending legislation.

Now, Mr. Murray, and I think other labor leaders, too—and I believe I know labor leaders well enough to say this—have at least a suspicion that we are not going to get through this Congress without having some labor legislation enacted.

Now, if that proves true, I would like to have that labor legislation be truly constructive legislation. As an aid to that end, I suggest we take Mr. Murray at his word—and I think we can take him at his word, I say that from what I know of him—and we can take the other labor leaders at their words, when they say that they want to cooperate with this committee.

I would like to go into this material and then have prepared some specific questions and considerations to present to him, as to the various pieces of legislation here, some of which have a pretty good chance of being passed by this Congress.

The CHAIRMAN. I understand Mr. Murray has offered to come back. The committee will determine, probably this coming week, what further hearings will be had; and we may ask you, Mr. Murray, to come before us again.

Mr. MURRAY. I will be at your call, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Murray. The committee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 12 noon, the committee adjourned until tomorrow, Thursday, February 20, 1947.)

(The following brief was submitted by Mr. Murray.)

TESTIMONY OF PHILIP MURRAY, PRESIDENT, CONGRESS OF INDUSTRIAL ORGANIZATIONS,
BEFORE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

My name is Philip Murray. I am president of the Congress of Industrial Organizations, an organization whose general purpose, function, and position I assume are substantially known to the members of this committee. I am also president of the United Steelworkers of America, which is one of the national unions affiliated with the Congress of Industrial Organizations.

Your committee has before it a large number of bills and proposals. The list has grown since the time you started your deliberations and hearings. If current trends persist and various Members of the Senate continue their vigorous activity of the past 2 weeks, I suspect that the list may have grown even in the brief period intervening between my preparation of this testimony and my personal appearance before you.

It is not my intention to take this list of bills section by section, or item by item, and set forth in a piecemeal and unrelated fashion the views of the representatives of the members of our organizations as applied to each. To do that, I fear, would be to do less than justice to this committee, to the subject matter before it, and to the gravity of the fundamental issues which today face our Nation and which will be affected by the decision of this committee.

In my judgment this committee can perform its function intelligently and with integrity only if it is willing to face the fundamental issues, to analyze the foundations upon which it is proposed to rear this new structure of legislation, and to determine whether those foundations are consistent with the best interest of our national economy and with our constitutional principles and our historic traditions.

It is the uniform characteristic of the bills before you that, with few exceptions, the sole or primary object of their operation is the labor movement. In varying forms and with varying effects, they point to the labor movement as a culprit. Senator Ball, with a frankness which, unfortunately, is the sole feature which I can commend in his present activity in this field, acknowledges that his object is, at the very least, a weakening of organized labor. As I believe our analysis will indicate, this is a decided understatement of the effect of the legislation he proposes.

We in the labor movement have had more than our share of the experience of being subject to abuse and attack. As organizations operating in a field of many hostilities and conflicting interests, we expect and assume that many of those whose economic interests are opposed to those of our members will harbor an antipathy toward us and give voice to their views.

Nor are antilabor legislative proposals new in our experience. In my letter to the President of the United States on June 3 of last year, in which I urged the veto of the Case bill, I outlined the form, content, and characteristics of the stream of antilabor proposals which have poured into the hoppers of each of the sessions of Congress during the past 10 years. I offer for the record and have attached to my statement as appendix A, an excerpt from the letter citing some of the bills of prior years.

The campaign of recent months seeking passage of measures which follow this long line of past proposals differs from those of prior years primarily in its intensity, its scope, and its vigor. By speech, by press, by radio, by congressional proposal, by any and all of a numberless variety of devices, this Nation has been blanketed with a steady barrage of propaganda, of persuasion, of pressure, of innuendo—all seeking to build up a single direction and line of thought—that the major ills of our Nation are attributable to one group, to one class—labor, and that our salvation lies in subjecting this culprit to limitations, to curbs, to restrictions, all in the public interest.

The variations in the extremes to which various groups would go should not delude us into mistaking the common direction of all. There is an extremist fringe which would repeal the Wagner Act, repeal the wage-hour law, repeal the

Norris-LaGuardia Act, repeal the Social Security Act—all presumably with the intent of permitting this country to start anew, start afresh, start with a clean slate—start with 1890.

If this makes some of the bills before you look mild by comparison, it is only by comparison. The direction is the same. Only the length of the proposed journey varies. But before considering the impact of those bills I want to consider the validity of their direction. Before debating how far down the road we are to go, isn't it fair to examine whether we are on the right road at all? Isn't it proper to decide where we want to go and how we want to get there, before we embark on the journey which these bills suggest?

Is labor the culprit? Are we in a situation where there is the slightest validity to this mad campaign to chastise American working men and women? What are our current ills and where are their causes? What are our current difficulties and whose are the responsibilities? What has been labor's role in our economy? Has it been a force for good or for evil? What is the role which labor is playing today? Is its program constructive and helpful or otherwise?

Are you gentlemen prepared to face these questions? Are you prepared to lay aside all prejudices or predilections and seek objective answers? Are you prepared on the basis of those objective answers to weigh these bills before you, not on the premise of an artificially-inspired clamor but on the premises dictated by the good of America? If you are, you will bear with me while I describe to you the situation in which I think we now find ourselves. And if you will, let me recall the stages through which we have passed in recent years to arrive at this situation.

Eighteen months have passed since the war with Japan ended. A few weeks ago the President abandoned most of his remaining war powers. But we are still operating an economy only partly demobilized and not yet adjusted to peacetime operations. If we are to establish an American economy of continuing full production and full employment, we must reverse the trends of the past 18 months, which have been generated by unrestrained monopoly in finance and industry. We must restore a balance within our national economy which will make possible a continuing expansion of our national income and its equitable distribution. During the last few years of the war and the year and a half since VJ-day our reconversion from war to peace has been dangerously lop-sided, thus strengthening the position of those forces working for an economy of scarcity and weakening the ability of workers, farmers, and independent businessmen, professional and white-collar workers to reestablish an equilibrium.

Before the war ended I said, "To correct the drift toward totalitarianism in this country, the role of all those groups seeking to maintain full employment and democracy in industry and Government must be strengthened. The groups among big business who agree with us as to the need to resist this drift * * * should welcome and promote the point participation of all like-minded groups in the program for transformation of our economy from war to peace, and the maintenance of full employment in the transition period."

After VJ-day, at the time of the President's Labor-Management Conference in November 1945, I urged that the representatives of labor and industry must go beyond the narrow questions of the mechanics of labor relations if we were to present the President with an effective program for improving industrial relations. I warned that unless the Conference considered wages, prices, and profits as fundamental to the problems of labor and management, the Conference would fail. It did fail, and its failure led directly toward the insistence of management upon price increases without regard to wage increases or existing levels of profits.

The time is very late but it is not too late. We can achieve an expanding peacetime economy of full production and full employment by measures of cooperation between industry, labor, and agriculture which run directly counter to the present drift. But Congress must make clear to the people of this country that it will not tolerate the efforts of monopoly to defeat the possibility of achieving such cooperation. We cannot move far down the road of punitive legislation against labor inspired by monopoly industry and invoked by the legislative arm of government without disastrous consequences. These measures are the forerunners of a serious depression not only for the workers but for the farmers, the white-collar workers, independent business, and the professions, and all but the most favored few throughout our country. The war has demonstrated how needless it is for us to endure another depression; and yet there seem to be many people in high places who have not learned the lessons the war has taught. The labor organizations I have the honor to represent are prepared to assume

responsibility for carrying our share of the load in this cooperative undertaking.

I think we should bear in mind that the war just closed climaxed a period of 30 years of the most rapid change in a world staggering from the blows of World War I. This 30-year period was marked by the most unprecedented advances in scientific and technical developments, reaching its peak in the making of atomic bombs and their explosion upon Hiroshima and Nagasaki. To date, we have been able to adjust to these world-wide and earth-shaking changes. If we undertake the effort cooperatively, I believe that we can come through the period ahead in good shape.

To do so we are required to understand perhaps for the first time what it means to all of us to live in the atomic age. I use the word to include all of the breath-taking developments in science and technology of the last 10 years, including jet-propelled planes, rocket bombs, and recent advances throughout the field of physics, chemistry, and biology. Remember, all of these advances have been made in a world most of which lies prostrate today from the impact of war. And in the nation which produced the atomic bomb, over half its families today are earning less than what is needed to provide a decent income for a family of four at present costs of living. This means that here in the United States today millions of men, women, and children are living far below the levels of health and decency.

This is the problem to which, I submit, we must address our immediate attention. I therefore urge you to consider in more detail what the situation is today.

What are the danger signs?

Profits, after all taxes, are soaring far above even in high wartime levels set by leading corporations. At the same time take-home pay is below wartime levels while living costs, already at record highs, are still rising. And to complete the picture, the trend toward monopolistic control of our economy was accelerated during the war and proceeds apace today.

As to profits:

The President has estimated corporation profits for 1946, the first full peacetime year, at \$12,000,000,000.

Compare this with an average profit during the war years, 1942-45, and remember that the wartime average towered by almost 150 percent over the 1936-39 averages of 3.9 billion dollars.

The peak of wartime profits after taxes came in 1943 with 9.9 billion dollars. The estimate for 1946 is approximately \$2,000,000,000 higher than the highest wartime year.

High as have been the 1946 returns, profits for 1947 give every indication of dwarfing them by comparison. For 1947, estimated profits before taxes for all manufacturing corporations are 15.5 billion dollars.

Perhaps you can better grasp the magnitude of these figures when I tell you that out of these profits before taxes, manufacturing corporations on the over-all average could set aside 7.7 billion dollars for a wage increase of more than 20 percent and without affecting prices still retain for themselves profits after taxes equal to those made during the war years and twice those of the prewar years.

Contrast with this the state of consumer income: The share of the national income going to wages and salaries has declined from 68 percent in the 1942-45 period to 62.5 percent in 1946, with a correspondingly larger share of the national income going to business. Consumer income must rise by \$22,000,000,000 above the level of the third quarter of 1946 if the goods coming into the market are to find buyers.

The average weekly earnings of production workers in manufacturing were \$45.83 in October 1946. This was \$1.67 or 3.5 percent lower even in nominal dollars than the January 1945 level, despite the wage increases of early 1946.

Moreover, in view of the price increase even as reflected in the Labor Department Consumer Price Index, \$45.83 in October 1946 could purchase, in terms of January 1945 dollars, only \$39.27 worth of merchandise. The figure, of course, is even lower today.

The minimum weekly budget needed for a family of four in October 1946 was \$70.52. Contrast with this the \$45.83 of actual average earnings which I have mentioned. Average weekly earnings are therefore \$24.69 below a minimum budget to maintain health and decency.

This minimum budget of \$70.52, determined by the Heller Committee for Research in Social Economics of the University of California, permits only a very

modest standard of living: one overcoat for the wage earner every 6 or 7 years; a new suit once every 3 years; $\frac{1}{4}$ pound of bacon, 2 dozen eggs, and 1 pound each of butter and margarine for the entire family each week; no choice cuts of meat whatsoever.

How can a family of four live on \$45.83 at today's prices? And remember, this is the average production worker's family. What about families below that figure?

As to the rise in the cost of living during 1946, there has been a Nation-wide campaign to persuade the American people that the demands of labor for wage increases caused the high prices of today. The record shows, however, that because production in our major industries is monopolized by a few corporations, charging what the traffic will bear, the price increases of 1946 bore no relationship to wage increases granted, and that manufacturers' profits soared to record heights.

On November 5, 1946, the Eighteenth Quarterly Report of the OPA declared that the extremely favorable profit record of most branches of industry demonstrated the feasibility of substantial wage increases early in 1946 without any price increases. However, price controls were relaxed so greatly as "to provide basis for question whether wages would be restored to balance with prices." By the end of June, before the sharpest price rises had even begun, manufacturing industry as a whole had raised its prices by 10 times the amount which would have covered wage increases without any squeeze on profits.

From April 1945 to August 1946, average hourly earnings in manufacturing rose 6.7 cents, raising total manufacturing costs about 2 percent. On the basis of man-hours worked in August, this would increase the annual wage bill by 1.7 billion dollars. For the same period, wholesale prices of manufactured goods rose 22 percent. On the basis of production in August 1946, this price rise would increase the annual value of manufactured products by at least 18 billion dollars.

For an example of the effects of decontrol, consider meat. The day after the President ordered the final decontrol of meat on October 14, 1946, pork chops rose from 43 cents a pound to \$1. Already in the first half of 1946—before decontrol—Armour & Co. had announced profits after taxes of \$9,755,716—120 percent above the first half of 1945.

At this point I call your attention to appendix B to my statement in which are given some figures for price, profit, and wage trends in various corporations and industries.

These facts indicate how lopsided our economy is becoming. These facts are in very large measure the result of the growing control exercised over our economic life by giant concentrations of power in the form of virtual monopoly. Let me remind you briefly at this point of a few facts gathered by leading private research associations and congressional committees. These materials are drawn from standard sources.

Have you gentlemen considered the implications of the fact that 250 large corporations control two-thirds of the usable manufacturing facilities of our entire country? Have you considered the implications of the fact that by reliable calculation more than 100 of the largest corporations in our Nation are controlled by 8 groups of banking interests?

In the steel industry, the 10 largest corporations hold more than three-fourths of the ingot production capacity; 3 banking houses control 8 of those 10 producers.

As reported to the Temporary National Economic Committee by the Securities and Exchange Commission, approximately eight-thousandths of 1 percent of the population own one-fourth of all the corporate stock in the country and approximately six-hundredths of 1 percent of the population own one-half of all the corporate stock in the country.

Among the largest 200 nonfinancial corporations, the top 1 percent of the book shareholders accounted for 60 percent of the common-stock shares outstanding.

As of 1935, among the 200 largest nonfinancial corporations and the 50 largest financial corporations a group of some 400 men held nearly a third of the 3,544 directorships. This was merely one of a number of means noted by a report prepared by the Smaller War Plants Corporation last year among the devices used for concentration of controls over American economy.

These are terrifying facts. They pose the No. 1 problem before this country today. They are all the more significant when it is recognized that they do not reflect merely a static situation. They are a product of a trend which is still going on.

If what I have reported to you as to the present extent of monopoly control is startling, consider that the 200 largest nonfinancial corporations owned one-third of our national assets in 1909, 48 percent in 1929 and 55 percent a few years later. Consider that in 1880 the four largest producers in the iron and steel industry owned 25 percent of the country's rolling mill capacity. In 1938 the percentage was 64. I shall not burden you with additional statistics to prove the direction in which we have been moving. There can be little dispute as to the existence of such a movement. As a result, two basic economic facts of today may be stated:

1. We are now in a situation where a small group of men controlling giant combines and combinations of interests are in a position to dictate the movement and activities of an overwhelming portion of our entire economy.

2. The process of amalgamation, merger, and concentration is continuing today in a trend whose significance is best summarized in some recent remarks of Mr. Wendell Berge, Assistant Attorney General of the United States, in charge of antitrust prosecution, who said:

"The monopoly problem is today more serious than at any time since the passage of the Sherman Act * * * The real source of the threat to free enterprise * * * lies in monopolistic control over our great industries. If we really believe what we constantly say about the necessity of preserving free enterprise then the time to act on this affirmation of belief is now * * * it is sheer delusion to believe that we can tolerate regimentation by monopoly without in time necessitating regimentation by government.

There is a peculiar irony therefor—amusing if it were not so vicious and unprincipled and so devastating potentially in its effect on the welfare of the people—in the outcries of those who call this Congress to action against the "monopoly" of labor.

At a time when small groups of men in a financial oligarchy, freed from even the relatively slight controls of legal limitations on prices are engaged in a gigantic gouge of the American people to build the profits which I have described to you, it is suggested to this Congress that what is needed is a set of controls and curbs on the organizations of working men and women. It is suggested that we are to depart so far from the principles of the thirteenth amendment which declared that human beings are not chattels, and of the Clayton Act which declared that the labor of the human being is not a commodity or article of commerce, as to declare that working men and women commit a crime against the welfare of a nation when they organize together into associations to improve the working standards and living conditions of the employees of the country.

Can such associations be likened to monopoly? I have described some of the instances and aspects of the centralization of control of our giant financial and industrial institutions. Later I propose to contrast with this the workings, objectives, and functions of a free and democratic labor organization.

At this point, however, I deem it important in evaluating what I have told you of our present economic circumstances, to consider some of the lessons to be drawn from the experience of our country in the period from the end of the First World War to the crash of 1929, and the events leading from the depression to the Second World War.

The parallels between the steps taken after World War I and those being taken today by industry and government are frightening. Also, during the almost 30 years which have passed since 1918, we have come to live in a world that has taken so many hard blows that it is difficult for me, at least, to imagine the consequences of another depression and another war.

The 1920's witnessed several developments which in sum total contributed mightily to the crash of 1929.

A savage, uncontrolled, unprincipled onslaught on the labor unions. This was an era of unbridled use of discrimination, the labor spy, flagrant provocation, company police, blacklists and every other weapon in the arsenal of employers to cripple existing organizations and prevent new ones. For an extremely restrained understatement of the picture, permit me to quote briefly from *Labor Problems in American Industry*, a standard text by Dr. Carroll R. Daugherty. He reports that, soon after peace was declared following the First World War, "the inevitable forces of reaction and readjustment gave rise to conditions which seriously threatened to wipe out all organized labor's wartime gains. Personnel management, company unions, profit-sharing, and employee stock-ownership seemed to be the desired answer for many employers for high labor turn-over, irregularity of attendance, and frequent strikes. These were fostered partly also as part of a belligerent, repressive, Nation-wide antiumion open-shop drive

carried out as an important feature of the work of the National Association of Manufacturers and other employers' groups."

This antiunion open-shop drive of the early twenties led to a sharp decline in trade-union membership during this period. Between 1920 and 1923 total trade-union membership declined from a little over 5,000,000 to 3,600,000. In the following 6 years leading up to the crash of 1929, trade-union membership decreased an additional 200,000 to a level of 3,400,000 in 1929.

Trade-union membership was suppressed during the boom twenties in the basic industries, such as iron and steel, machinery and metals, automobiles, rubber, textiles, and bituminous coal, all of which became or remained wholly nonunion with a significant decrease in the number of trade agreements between employers and unions.

Among the factors contributing to the decline in union strength during this period, according to Dr. Daughtery, were the activities of "the judges of certain Federal and State courts, who, by issuing almost as many antiunion injunctions as had been granted in the previous half century, effectively blocked many unionization programs."

Closely related to this drive on the labor movement were two other major developments: During this period of union weakness, which corresponded with the boom twenties, profits of all corporations, after taxes, increased from \$4 billion to \$7 billion or 72 percent (1924-29). During this same period output per man-hour or efficiency of the workers in manufacturing plants increased 35 percent according to the Bureau of Labor Statistics. The rise in productivity, however, was not reflected in higher wages, as they increased only $\frac{1}{2}$ cent an hour per year, but instead was reflected in higher profits.

The failure to adjust wages for rising productivity and rising profits resulted in a great maldistribution in our national economy. This maldistribution led to the most drastic depression America has ever known.

Is this the prospect which this committee wishes to hold out to the people of this country for the years following the present war? Already we have the portents of an exactly similar state of affairs, as I indicated to you a few moments ago.

These are not accidental developments in our economy. They are not the results of coincidence or even of natural economic forces. I cannot bring myself to believe that our free enterprise system operates naturally to generate its own destruction. Many of the weaknesses and strains which are evident in the facts which I have described to you are the results of powerful economic concentrations, unnatural and improper in our economy, which more and more shape the destinies of this country.

These powerful economic concentrations were the unyielding enemies of labor throughout the 1930's. They demonstrated during that period that they had no program for leading the country into a period of lasting high-level production and full employment. Yet throughout the thirties and World War II they fought every effort by labor, the independent businessmen and the working farmer to carry out a cooperative program for making the free enterprise system work. They remained in political and economic opposition until the outbreak of World War II. Then, after months of struggle as to the terms on which these giant combinations would throw their full weight behind the defense program, the cooperative and independent groups found that in one branch of war production after another, monopolistic forces were in the driver's seat.

I want to recall briefly the events of 1935-40 when the CIO was busy organizing the unorganized in America's major industries. In this brief recital I shall deal with the economic resistance to organization by giant combinations, their consistent opposition to the passage of legislation to protect the economic and social welfare of working people, and their rear guard action in the courts and legislatures to prevent the validation and enforcement of this legislation.

Start, then, with the period when industry had collapsed and was calling for resuscitation by a National Industrial Recovery Act. Efforts to develop a drive within the AFL to organize industrial unions in the mass-production industries had been going on for many years. Spontaneous developments of an independent character, however, marked the year 1934, and the need for such organization was brought forcibly to the attention of the AFL at the 1934 convention in San Francisco. Remember that all this occurred under section 7 (a) of NRA, and not under the Wagner Act.

When, in July 1935, the National Labor Relations Act was enacted, it did not greatly alter the trend already developing towards active organization of industrial unions. The demand for that had been vigorously presented at the

1934 AFL convention, and promises of action were made by the executive officers. Meanwhile the spontaneous organization of such unions was developing in all parts of the country.

In the fall of 1935 a small committee of eight union presidents met to promote industrial organization in the mass production industries. The committee aimed at bringing the mass production workers into the American Federation of Labor. In September 1936, the executive council of the AFL drove the CIO unions out of the federation for pursuing this task of industrial organization.

Up to September 1936, the CIO brought the various competing unions in the automobile industry into a single industrial union. In this same period the steelworkers organizing committee put a large staff of organizers into the field. The United Rubber Workers launched an organizing drive which brought tens of thousands of workers into their union.

In the middle of November 1937, the United States census of unemployment showed that nearly 11,000,000 were unemployed. By February 1938, at least 13,000,000 employable workers were out of jobs, and by May 1938 it was estimated that about 13,600,000 were unemployed. Even as late as November 1938, this figure was not reduced by much more than a million. In spite of the new depression, labor was able to withstand wage-cutting drives and wage rates were generally maintained. In July 1938 manufacturing employed 6,400,000 while 6,500,000 workers with approximately 20,000,000 dependents were on relief and WPA. This does not count the million and a quarter receiving unemployment compensation. Let me remind the committee that these were the conditions about 1 year before the Second World War began. Even in November 1939, there were still almost 12,000,000 unemployed workers.

It is important to recall that it was possible for the most important part of American industry to operate with a substantial and wholly satisfactory profit even in the face of such unemployment. A computation of the profits of the leading corporations for the first half year of 1939 by a leading banking firm estimated their average profit as 7.1 percent. One of the largest automobile firms was reported to be making profits at the rate of 19.7 percent, 21 automobile equipment firms at the rate of 11 percent, 6 aircraft and parts firms averaged 24.6 percent. Thus, for the first time in our economic history it had become possible for the major part of American industry to operate with full satisfaction while a quarter of the working population was unemployed. It is this situation which existed right up until the beginning of the war boom which today overshadows the thinking of the average veteran and the rest of America's workers in farms, plants, offices, and stores.

Let us look for a moment at the history of proposed legislation and administrative decisions in the field of labor management relations. From the passage of the Wagner Act in 1936 until the start of the defense program in 1940 both the National Labor Relations Act and the Board were under constant attack from those industrialists unwilling to accept establishment of the right of labor to organize and bargain collectively. The validation of the act by the Supreme Court in 1937 did not end these attacks. In the year 1937-38 for example the Supreme Court of the United States was flooded with cases. In Congress proposals to investigate the Board, to amend the act, and to cripple the Board by reducing its appropriations flooded the hoppers.

In the year 1938-39, among many important decisions the NLRB entered a series of decisions with respect to several of the large corporations which had continued to provide outstanding opposition to the act. The records of the cases involving these companies revealed a consistent and continuing pattern of interference with the free choice of representatives through all the measures familiar in our industrial relations history of years gone by including violence and direct attacks on the union, their organizers, and members.

In January 1939 there began a new campaign to destroy the Wagner Act, spearheaded by the Smith committee set up by the House of Representatives. The House passed an amended Smith bill but the Senate committee did not report favorably any amendments to the National Labor Relations Act. The administration of the act was nevertheless seriously hampered by the attack and its many ramifications. This attack took place at a time when the Republic Steel Corp., the Bethlehem Steel Co., and the Ford Motor Co. were subject to outstanding orders of the Board directing them to comply with provisions of the Labor Act.

From these few facts taken from the history of the CIO between 1935 and 1940, and the history of the efforts of labor to establish equality of bargaining power with industry, Congress and the American people can see that the campaign

of misrepresentation now being carried on in no way reflects the true facts. From 1935 to 1940 the National Labor Relations Act and the Board operating under that act were under constant attack through the courts and in Congress by those who were determined that equality of bargaining power should not be achieved.

At no time in this period were the relations between labor and industry equalized or stabilized. And throughout this period the gains made by organized labor were made not only in the face of vigorous attack, but in the midst of the most widespread unemployment. If we achieved success during this period in raising the standards of living of organized labor it was because we were engaged in a continuous effort on behalf of the whole working population.

To summarize the period from the formation of the committee for industrial organization in 1935 to the start of the national defense program in 1940 the CIO had consistently fought to organize the unorganized, to increase the purchasing power of America's workers, employed and unemployed. We fought for the passage of the Wages and Hours Act and for its effective administration. We took an active part in the fight for improved social security, for a Federal housing program, for every measure of social and economic aid for the farmer, the worker, the youth, and the aged. No one familiar with the period prior to the war can deny the importance of these measures as a support for the national income or the general welfare of all our people. We did all these things because we were forever conscious that the welfare of our American economy depended upon raising the total national income and the incomes of each and every family whose breadwinner worked for a living.

In the absence of this forward motion to which the CIO made an important contribution throughout the period 1935-40, I seriously doubt whether our economy would have been able to reach the unprecedented heights achieved during the war. Our manpower and womanpower were undoubtedly in far better physical and psychological condition because of these measures. And the Nation's industrial plant had likewise benefited. Our cities were far better able to meet the demands of wartime expansion because of their improved public works.

The CIO is proud of this record of accomplishment. It is a record, I say, which every member of this Congress should applaud. And it is a record which gives the lie to the gigantic effort of today to depict American labor as the group which merits restrictions and curbs.

The war itself from September 1939 generated an economic expansion such as we had never seen before. And that in turn made new demands upon the CIO and its members. Nor did the attacks upon labor in the courts, in Congress, and throughout the communities of America cease during this period. Moreover, the very war production program itself, because it was never administered as a fully cooperative undertaking, with equal partnership for labor, agriculture, and industry, generated the postwar problems now confronting us.

Our people learned from the war what our economy can produce. I said, in January 1944:

"We know now if we never did before how potentially rich this country is. Any country that can display such an outpouring of productivity when 10,000,000 of its most effective sons and daughters, its most alert and vigorous workers, are in the armed forces is not going to accept a return to an era of widespread unemployment."

In that same speech, I also said:

"The question to which the average man wants an answer is: How can we maintain after the war the level of the billions of dollars in annual income we have achieved during the war? How can we attain the \$200,000,000,000 annual income of which we have shown we are capable? I do not believe we will long be satisfied with less. Indeed, we know that this cannot represent our maximum effort since 10,000,000 of our most effective workers were in the armed forces when we made our war record."

On January 7, 1941, when the Office of Production Management was established by Executive Order, Sidney Hillman, late president of the Amalgamated Clothing Workers, CIO, was made Associate-General Director. From that time until the close of the war the CIO played a decisive role in the war production program. Millions of our members and their sons and daughters entered the armed forces. New millions joined our unions to wage the battle of war production. And hundreds and even thousands of CIO representatives served in official capacities in the defense program, in the War Production Board, the War Manpower Commission, the Office of Price Administration and Civilian Supply, the Office of Civilian Defense, and the War Labor Board.

In the same spirit of contributing as much as possible to America's war effort, we voluntarily gave our no-strike pledge to the Nation immediately after Pearl Harbor and adhered to that pledge until the final surrender of Japan in the late summer of 1945.

The demands of war production which brought a tremendous expansion of industrial activity and a corresponding growth in the size of many labor unions placed America's economy under a most severe strain. The CIO was in the forefront of the struggle to bring about an effective economic stabilization program which would counterbalance the tremendous pressures involved in the conversion to war and the reconversion to peace.

Through the operation of the War Labor Board, wages were most effectively stabilized, but despite the best efforts of organized labor and consumer groups, the controls on the other parts of the economy, particularly those on prices, were continuously weakened by the successful effort of big business on both the legislative and administrative fronts.

We constantly called attention to the dangerous situation that was developing, in the midst of the war, in the uneven application of the principle of stabilization. We warned that only an orderly program of reconversion could avert serious postwar economic dislocation.

On October 3, 1944, President Roosevelt signed the War Mobilization and Reconversion Act, known as the George reconversion bill. This measure was passed in place of the labor-supported Murray-Kilgore-Truman bill which had the production-employment board and industry council provisions. By means of the George bill, there were set up directly under the Director of War Mobilization and Reconversion an Office of Contract Settlement, a Surplus War Property Administration, and a Retraining and Reemployment Administration. Within the Office of the Director there was created an advisory board to the Director of War Mobilization and Reconversion.

As president of the CIO I had the honor to be chosen to represent labor, together with President Green of the American Federation of Labor, and Thomas Cashen of the Railway Labor Executives Association. The nine other members of the board included three from agriculture, three from industry, and three from the general public. Right up until the present time, serving on this Board, I have attempted to carry out what I believed were the intentions at least of the administration which sponsored this legislation, and of the original authors of the proposal. It was my hope and I believe theirs that through the workings of this board and office we might achieve an orderly transition from war to peace. I believe that the failure to use and to perfect this machinery toward these ends is responsible for many of our present difficulties and has led more or less directly to the demands now being made for antilabor legislation.

Had industry, labor, agriculture, and representatives of the public been encouraged and assisted by Congress and the administration to devise and initiate a comprehensive program for maintaining the equilibrium throughout this period, I feel sure the job could have been done. It is that sort of job which still needs to be done.

Meanwhile our activities on behalf of the war effort and our voluntary relinquishing of the strike weapon had not rendered us immune to the attacks of some industrialists or some elected officials who remained unreconstructed in their opposition to the labor legislation of the thirties.

Employers took increasing advantage of the cumbersome machinery which grew up under the complex structure of the national and regional war labor boards. Delays became an increasing source of irritation to the members of local unions. Decisions by regional boards were appealed to the national board, and decisions of the national board which were unpopular with the employers were in many cases not complied with. But the representatives of the international unions, inside and outside the structure of the boards, worked effectively with local union officers to avoid work stoppages and to keep production rolling off the lines. Labor took the lead in perfecting the machinery of the war production drive and labor-management plans in thousands of plants throughout the country.

During this whole period there was no let-up in the stream of legislative proposals to curtail the rights of labor. Even before Pearl Harbor the war emergency was used as an excuse for the introduction of bills to impose compulsory arbitration, to permit the use of the Army and Navy in support of the employer in any labor dispute, regardless of the conditions which caused the unrest, to make union-shop contracts illegal, to suspend the Norris-LaGuardia Anti-injunc-

tion Act, and permit widespread use of the antilabor injunction, to permit employers to dismiss any active union worker on the grounds that the employer regarded such a worker as a "subversive character."

The drive against labor was also carried into State legislatures, with the passage of bills restricting labor unions, regulating their structure and operation, outlawing union security, harassing workers and their unions in a multitude of prohibitions and controls.

Beginning in January 1943, the tempo of attacks upon labor increased. The first major success scored by the opponents of labor was the passage shortly before the summer recess of the Smith-Connally Act, which has since been widely acknowledged as a strike-provoking measure.

In 1945 the victories first over Germany in May and then over Japan in August hastened the processes of reconversion. There began the lopsided relaxation of controls by the War Production Board and the Civilian Production Administration which created a chaotic condition in the distribution of supplies and material. Excess-profits taxes were removed, corporate taxes reduced, and price controls further relaxed, contributing toward the development of inflation.

Immediately after VJ-day I once more urged an orderly program for reconversion and pressed home these proposals at the labor management conference. At about this same time President Truman presented his constructive 21-point program to Congress, but most of the proposals which he made were ignored.

Instead of the enactment of legislation to advance the reconversion program, congressional committees were actively pressing for the more rapid abandonment of controls and ignoring immediate and long-range legislation such as emergency unemployment compensation, and the Wagner-Murray-Dingell social security bill. During this same period a host of antilabor bills were introduced to revise the basic principles of the National Labor Relations Act, establish crippling restrictions on labor activities, on the right to strike, on the union shop and on labor organizations generally, impose compulsory arbitration, deprive labor of the right to any political voice, impose on unions devastating penalties for minor offenses.

In the closing months of 1945, Labor's primary responsibility was clear—to use its own efforts to restore some balance to the economy and improve the living standards of its members which had sharply deteriorated with the cut-backs in production and the elimination of overtime work. For the first time in 4 years American labor was attempting to bargain collectively with management on the issue of wages, but in the difficult circumstances of an economy that still retained an element of wage control, while production and price controls were rapidly being lifted at the instance of big business, and the cost of living was soaring. Management's contribution to this situation was a refusal to bargain.

Out of this period of one-sided control emerged the labor management disputes of 1945-46. In every case, CIO unions entered into negotiations many weeks and even months prior to the intervention of the Government and the issuance of findings by a Presidentially appointed fact-finding commission or the recommendations of the President himself. These proposals were uniformly accepted by the unions. With almost equal uniformity, they were rejected by management. In each case, final agreement by management was not forthcoming until the unions had struck.

Much has been made of the fact that in the first year following VJ-day, 120,000,000 man-days of work were lost in labor disputes according to the United States Bureau of Labor Statistics.

Please remember that of this, 103,000,000 man-days, or more than 85 percent, involved strikes where the sole issues related to wage and hour conditions. These were strikes arising out of the stresses and strains of our economy. They were strikes involving the economic issues to which I have directed your attention. Jurisdictional strikes? Boycotts? Recognition strikes? The number of workers involved in jurisdictional strikes in the last year totaled four-tenths of 1 percent of the workers involved in all strikes. Is that the type of problem which requires No. 1 position on your list while the proposals for modernization of obsolete minimum wage and social security laws lie mouldering in the pigeonholes of your committees.

Against this background a large number of proposals which had been accumulating over the months for the suppression of labor's rights were gathered together and embodied in the notorious Case bill. This was vetoed by the President and there were not sufficient votes in Congress to override the veto. At this time the President called for the enactment of a labor-draft measure designed

to impose military restraints or economic servitude upon workers who might engage in certain kinds of strikes. The bill was not enacted by the Senate. The Senate did pass the Hobbs bill, however, which was accepted by the President on the basis of advice given by Attorney General Clark that the bill would not create the evils feared by organized labor.

Now, a year later, when labor is again attempting to bargain collectively with management and this time after a year of unprecedented peacetime profits and skyrocketing living costs, Congress is once more asked to pass legislation. Once more while labor is seeking to meet the serious economic issues I have described, while labor is seeking an adjustment of the distortions and a removal of the dangers I have described, it is urged that government, instead of concerning itself with the underlying economic danger signs, must use its powers to weaken labor's bargaining strength as against the concentrations of financial power which I have described.

There, gentlemen, you have the economic picture. Can you accept the responsibility of closing your eyes to it? Can you view the picture and then in all honesty say the conclusion that flows from it is the necessity for turning your weapons against American labor? Can you view that economic picture and conclude that what is needed is a weakening of labor unions, a lowering of wage rates, and a repetition of the post World War I fiasco?

On the basis of every economic consideration which should be uppermost in your minds this Congress should be straining its every effort to devise means for assuring a sounder distribution of the income of our Nation. This Congress should be aware of the fact that it is unfortunate that the workers have not achieved strength sufficient to enable them to operate far more effectively in defense of the national living standards, against the depredations of those powerful groups who are responsible for the situation in which we now find ourselves. Our economic ills cannot be blamed on any excessive share of the national income going into the hands of the consuming public. On the contrary, we are faced with the danger of a drying up of the economic resources of the consumer. In our present state of maldistribution of national income the danger is that labor unions are too weak, not that labor unions are too strong.

THE INSTITUTION OF TRADE UNIONISM AND THE PROPOSED LEGISLATION

As you consider the body of legislation before you it is important that you pause and consider also the exact nature of the institution which you are attacking. Do not fix your mind on the exception, the extreme, the occasional abuse. Remember that the legislation as you have it before you is directed against the institution itself, against organizations of labor. When you legislate against union security you are not making any distinctions. You are striking at the security of all unions. When you legislate to weaken labor in the bargaining process by imposing a compulsory and inflexible cooling-off period you are affecting all of labor and all unions. When you take that fateful step of compulsory registration and Federal regulation of labor organizations you are affecting the general nature and concept of free American labor unions.

Permit me, therefore, to spend a few moments reminding you of the general rule and not of the exception, describing the normal procedure and not the occasional deviation.

Trade-union structure in modern industry

Please remember that labor unions at base and at heart are not made up of myself, or of William Green, or of any other person in national elective office. They are in origin and in their best operation associations of individual working men and women throughout the country.

My own national union is composed of approximately 2,000 local unions. Membership is open to all eligible persons, to all working men and women in the industry regardless of race, creed, color, or nationality. Every member in local union meetings and in election of local and national officers has an equal voice, a full right to be heard, and a full right to cast his ballot and have it counted.

In addition to local union meetings, required by constitution to be held at least once every month, each member is afforded an opportunity for the presentation of his views and an expression of his grievances through representatives elected from among the workers' ranks in each department and division. On a national plane national conventions permit direct representatives of each and all of the local unions to participate in formulating basic policy of the entire organization.

In each district periodic meetings of representatives of the local unions formulate programs and policy for their respective areas. Before each contract negotiation large representative bodies of representatives specifically designated for formulation of wage and negotiation policies are convoked to formulate program for presentation to employers.

At every level, from the lowest to the highest, the organization serves as the only medium whereby the individual worker in the industry may make his voice and judgment heard and felt, may seek some participation in the decisions which affect his daily working life.

Today we in our organizations are striving to do even more than that for the advancement of the strength and stature of the individual worker. The members of our unions have turned their eyes more than ever toward the opportunities which may be made available through their organizations for education and training. In addition to the activities of our own educational departments, we have developed and are now developing more than ever lines of contact and cooperation with such major universities as those of Wisconsin and Pennsylvania looking toward ever increasing availability of the services of those institutions for educational activities among our membership. Leaders in our organizations have thrown their support behind the move for establishment of a Federal service devoted to the furtherance of labor extension programs under the auspices of colleges and universities throughout the country. In all of this, our driving aim, our goal, our objective is the raising of our membership to even higher levels of intelligent participation, voice and leadership in the operation of their own organization.

Contrast these two situations: Ten producers in the steel industry operating more than three-quarters of the industry's capacity; 3 banking groups controlling 8 of those 10 producers. A small group of men are thus in a position to determine general price levels, wage policies, production levels, all of the economics of the industry on the management's side.

On the employees side of the picture: The workers in the industry, more than 800,000 of them, come together in a free and democratic organization. Each exercises an equal voice, each has an equal vote. The right to vote and the importance of one's vote does not vary with wealth, status, or any other factor. Every man is on an equal footing. Moreover, the right to participate is free and open to all who are in the industry or who may enter the industry so far as the union is concerned.

Yet there are those who see in this contrast a danger of monopoly—where? In the democratic structure through which the 800,000 steelworkers seek a voice in the framing of their own economic destiny.

Union's role in day-to-day labor-management relations

Permit me to direct your consideration also to the role which a union plays in the day-to-day relations between employer and employee. Permit me to contrast for your benefit the situation in the establishment in which no union is present and in the establishment in which a union operates.

In a nonunion plant, a single source determines wages, hours, working conditions; a single source determines employee assignments, interemployee relationship; a single source dictates the duties, the functioning, the day-to-day work and lives of every man and woman among the thousands who may be employed in the plant. The penalty of refusal to comply or even of expression of disagreement may be loss of job.

Contrast this autocracy in industrial relations with the daily operation under a collective-bargaining agreement. In every department and subdivision are grievance representatives designated by the employees from among their own ranks. Basic policies, wage rates, etc., have been bargained out and determined at the general collective-bargaining sessions on contract termination dates—usually annually. Here the employer and his employees through their representatives have discussed their mutual problems and reached agreement as to the policies and rules to govern their relations for the term of the contract.

Throughout the year it is inevitable that each day there will arise among the thousands of employees governed by the contract, as well as among the hundreds of foremen and other supervisory officials through whom the daily administration of the contract takes place, a multitude of problems. Individual employees may contend that their rates are improperly set, their job assignments not made in conformity with general rules; problems may arise as to appropriate penalties and other disciplinary action. For all of these a prompt discussion and solution is available through established contract machinery. In a matter of moments, if

necessary, the department grievance representative is available for consideration of the justice of the workers' side of the complaint and for discussion of the problem with the appropriate immediate supervisory person. If no agreement is reached, it is usually a matter of a day or two before an appropriate official of the company and of the local union may be in conference. For these grievances which require the consideration of still higher levels of authority, there is fixed procedure for bringing them to the attention of the top levels of both union and management—on the one side the highest level of management controlled, on the other the duly elected representative of all of the employees. In most modern contracts there is a final disposition through arbitration.

Suability of unions

Resort to the courts is a relative rarity. If the courts were a medium for enforcement or administration of the contract, labor relations would be a shambles. If all of the thousands of issues necessarily arising annually under any major contract between employer and employee were to become enmeshed in the procedural complications of court litigation, day to day life of employer and employee would have to come to a standstill and the courts would have to devote an overwhelming proportion of their time to the details of labor relations. That is the basic fallacy of the outcry of those who seek to erect the courts as the guardians and administrators of collective-bargaining agreements. Resort to the court can be not the means of effectuating collective bargaining but is rather a confession of its failure. True, it must be available—as it is—as an ultimate resort when collective bargaining actually has failed and when legal liability must be enforced. That is true today and requires no legislation. Those who seek to extend the functions of the Federal courts, enlarge the jurisdiction of the Federal courts, turn the minds and eyes of employer and employee to court action as the foundation for collective-bargaining relationship, render a disservice to the cause of collective bargaining.

What I have outlined to you should make clear the character of labor democracy. It should make clear that the operation of the trade-union movement exemplifies industrial democracy in action. Entirely consistent with maximum production and productive efficiency, it permits the workers of the country to have a voice in democratic fashion in the forces which shape their destiny and those of the national economy. Is that an institution which should receive legislative condemnation?

Like all democratic movements, the trade unions have been forced to evolve through a period of intense struggle. They have been compelled from the start as they are compelled today to fight against the vigorous and determined resistance of those who insist on industrial autocracy.

Proposed legislation ignores long history of labor relations

I will not undertake to give you a history of the labor movement. I will not undertake to repeat facts and highlights familiar to most members of this committee.

I am impressed, however, with the fact that many of those proposals now before you require, if we are to consider them intelligently, a few reminders of the long history through which we have come.

There was a time in American history when the mere banding together of workers into an organization for their mutual benefit was denounced and outlawed by our courts as a conspiracy.

There was a time in the history of our country when the mere conduct of a strike, however peaceful, and however justified, was denounced and condemned by our courts as unlawful.

As the weak and struggling labor movement of the nineteenth century grew stronger and became a somewhat significant force in our economy, the savagery and vigor of the devices of the opposition increased.

Labor spies, company police, clubbing and shooting of picket lines, discharge and blacklists of union members, formation of puppet organizations, all of these have a long and unsavory history in the background against which current proposals must be evaluated. It is a history which is not ancient. It is a history carried throughout the years, up to, through, and beyond the hearings and reports of the LaFollette-Thomas Civil Liberties Committee of the Senate. It is a history which I can assure you is not ended even today, as I can attest from my personal experience of recent months with the continued use of the institution of the paid company spy in union ranks.

In the 1890's a new weapon, with double-barrelled impact, was added to the huge array of munitions directed against the growth of the still struggling

labor movement. I refer to the antilabor injunction coupled with the misapplication of the antitrust laws.

The following years brought a wave of Federal injunctions—injunctions against strike, against speech, against assembly—yes, even against appearing on the street with one's family, or attending church with other members of the community. It was an orgy whose details have been fully described in many volumes and whose scope may be culled from thousands of pages of court decision. It was an orgy of power run rampant which shocked the best citizens of the Nation.

The Clayton Act and the principle that labor is not a commodity

The early years of the present century saw the beginnings of an effort to establish some principles of fairness and decency in the attitude of Government and employer toward the working man and his union. The Clayton Act in 1914 wrote into law the principle that the labor of a human being is not a commodity or article of commerce.

I don't know what those words or that principle means to the cynical minds of those who have been most active in support of some of the bills now before you. Certainly in the years which led up to 1914 those words embodied an inspiring battle slogan, the motto of a struggle to establish the integrity, the dignity, the stature of the human being. They were words emblazoned on the battle flags of legions of men and women rallying to a fight against an effort to grind them down to the level of statistical units, measurable in the eyes of the law in the same terms as tons of steel, yards of cloth, or miles of railroad track. They are words which should carry to us today the same kind of inspiration and devotion as were embodied in the moving comments on the dignity of man made recently before another committee of this Senate by Mr. Lillenthal.

It has been made necessary that we recall some of this history to our mind because today, after more than three decades of further progress and understanding in human thought, we actually find such organizations as the National Association of Manufacturers expressing the view—echoed unfortunately in the halls of Congress—that it is just as necessary to outlaw the combined efforts of the employees of several employers to act jointly in the formulation of decent standards of wages and other working conditions as it is to outlaw combines calculated to fix the prices of commodities. One of the bills before you accepts in full that principle.

Attempt, if you will, to revise the course of history. But if you do, then face clearly and frankly the course that you are taking. Delete from the Clayton Act the words to which I have referred, and declare in blunt terms that in your estimation human labor can be placed in the same category as articles of commerce; and meet, if you will, head-on the issue as to whether you are prepared to make that a principle of our legislative policy.

If you prefer to consider the same issue in terms more sharply economic, then consider whether you are prepared to say that our economic system requires competition in wage rates even as it requires competition in price levels. Consider whether you are prepared to insist that employers compete as to which can establish the lowest wages, which can establish the worst sweatshop conditions, and thereby achieve an advantage over the other in the sale of products.

Is it not, rather, an accepted concept of our national thinking that wages are not an item of competition? As I understand the American way of life, we would prefer that employers compete in the establishment of efficient modes of operation and manufacture, rather than base their competitive advantage on the establishment of sweatshop conditions.

The Federal injunction and the Norris-LaGuardia Act

Permit me to continue with some further historical reminders relevant to a consideration of some of the bills before you. I brought you up to the Clayton Act of 1914. That act was intended, among other things, to serve as a curb upon the wild and unrestrained tendency of the Federal courts to permit the use of their traditional injunctive process as an antilabor device. Despite the best efforts and intentions of the Congress of the United States, that law in the hands of the very courts whose partisanship it was designed to curb was manipulated so as to fall far short of its mark. The antilabor injunction in the Federal court remained an active and flourishing institution. It remained an institution of inequity and injustice not merely because of the rights which it curbed and restrained but because of the procedures by which it permitted its force to be utilized. The Federal injunction remained effective and operative as a curb

on peaceful and law-abiding activity of workers, on peaceful picketing and peaceful strike action. It remained available to employers as a weapon which could be secured without presentation of testimony, without open-court hearing—yes, even without notice to the union in advance of the issuance of the court order.

These inequities, these injustices, became part of the crying evil which inspired the continued struggle for rectification and adjustment of the attitude of Government and employer toward workers and their unions. Among the specific issues around which this campaign for reform rallied and which brought forth common recognition of a basic danger to the foundations of our system of justice were those arising out of the use of court process to compel working men and women, members of American unions, to perform services on products made under substandard conditions—under conditions which themselves constituted a direct threat to the working and living standards of those whose services were thus compelled by law. The cases of *Duplex v. Deering* and of the Bedford cut-stone workers were the two major legal proceedings in which the meaning of the Clayton Act was before the Supreme Court of the United States, and whose implications added fuel to the fire of the rising demand for reform of the law.

Norris-LaGuardia Act

This, gentlemen, was an important part of the struggle of the labor movement and of the liberal forces of the Nation in the years between 1914 and the enactment of the Norris-LaGuardia Act in 1932. Now, 15 years later, we find a determined effort to revise the course of history. At this late date, we are asked to go backward, to write into the law once more a criminal penalty for workers who refuse to lend their services to aid the product of a substandard employer.

Permit me to continue with my recital of historical high lights and reminders—for I have not yet reached the last of the proposals to turn the clock of history backward.

I carried you gentlemen in brief and hurried manner up to the date of the enactment of the Norris-LaGuardia Act in 1932. Remember that in all of this discussion I have commented only on the extent to which the instruments of government, the injunctions of the Federal courts, were brought into play on the side of the employer in industrial strife. Remember that during all of this period and long after the passage of the Norris-LaGuardia Act, the employer used regularly and ruthlessly, and with full legal support, all of the devices of terror and suppression which were his for the prevention of unionization. In the nineteenth century and in the twentieth century, activities of the company spy, the operation of the antiumion discharge and blacklist, the use of tear gas, machine guns, and other instruments of death in the hands of company police—all of these were accepted parts of American management's concept of the appropriate treatment for their employees. Mark Twain, in his description of life on the Mississippi River in the middle of the nineteenth century, told in matter-of-fact fashion how those pilots of the river boats who took the lead in the formation of the first organization in that occupation set up their forms and rules and constitutions, established their offices, and promptly retired to their homes because they were forthwith discharged by the owners of all boats on the river—who would tolerate no organization among their pilots.

More than 70 years later, the reaction of American employers continued equally sharp, equally prompt, and far more ruthless.

Proposals to disrupt or destroy the Wagner Act

It is this background which carries us to a consideration of the Wagner Act. I doubt that ever in our history has there been a legislative enactment subjected to such unprincipled abuse, distorted propaganda, and unmitigated attack both before its passage and ever since it has been the law. At the risk of painful repetition, I will recall the facts.

I must recall to your mind that the ink was hardly dry on the President's signature before 58 of the most prominent legal representatives of corporate America announced to the world their solemn decree and judgment that the act was unconstitutional and need not be obeyed. For 2 years this Nation witnessed the spectacle of a law of the land rendered a dead letter by virtue of the arrogant assertion of major American employers of the right to determine for themselves which laws they would obey and which laws they would not. The volume of litigation provoked by this arrogance of American industry pro-

duced, strangely enough, no such barrage of critical comment as has been occasioned by the efforts of workingmen in recent months to assert their rights through court action.

Not until 1937 did the Wagner Act reach the point where it could be enforced with any degree of effectiveness. But the viciousness of the attack on it did not abate in any way. In every session of Congress, in every forum, in every newspaper, by every available means of propaganda, it has been attacked and misrepresented. In each succeeding session of Congress we have been deluged with proposals for its repeal, its emasculation, its strangulation. This session and the body of the bills before you represent no exception.

The major complaint of those who attacked the Wagner Act from its inception and who attack it today is that it has been effective at least in some degree to remedy the evils at which it was directed. It has sought solely and exclusively to permit unionization and to make collective bargaining possible. It has dictated no terms or conditions of employment; it does not intervene in any way in the actual determination of the terms upon which the collective-bargaining agreement may be reached. It has aimed and attempted only to make certain that the employees, if they so desire, may appear with the representatives of their choice at the collective-bargaining table. It has aimed to make certain that the employer and the union meet in the collective-bargaining process and that obstacles to their bargaining be removed to assure a process of negotiation and agreement. That is all the Wagner Act seeks.

Even that limited objective has by no means been fully achieved. There are still employers today in large numbers and in many industries who have not accepted the principles of collective bargaining. There are still areas of American industry today in which the savage jungle warfare of the nineteenth century is still freely invoked by employers. The experience and statistics of the National Labor Relations Board to this day attest to continued violation even of the simple requirements of the Wagner Act.

Even more significant is the fact that the information gathered by the La Follette-Thomas Civil Liberties Committee of the Senate led to the introduction of a bill defining oppressive labor practices of employers which even today continue to be used and even today are beyond the reach of the law. Unfortunately and significantly, I do not find that proposal among those before your committee today.

Some constructive trends in labor relations

We are moving now into an era of promise as well as of much danger in our economy generally and in the field of labor relations in particular. Its economic dangers I have already noted. But we are also faced for the first time with a real opportunity for developing in collective bargaining a rationed foundation for stable and healthy labor relations.

There are some segments of American industry in which collective bargaining has reached a level of relative maturity, maturity born of bitter experience and evolved out of grim struggle. There are other and perhaps even more extensive areas of industry in which true collective bargaining is just now for the first time beginning to evolve.

Of the latter, steel is perhaps the most dramatic example. Steel is an industry in which, despite the signing in 1937 of the initial contract with the United States Steel Corporation, the same year produced a bitter conflict brought on by the ruthless insistence of other companies in the industry on an effort to destroy an organization among its employees—in direct violation of the law of the land. The Little Steel strike of 1937 was intense, the savagery of the employers and of Government unbounded. Many workers lost their lives at the hand of city and company police. The union itself was all but smashed.

By herculean efforts the workers succeeded in completing their organization and succeeded in reestablishing their status as union men at or about the time when the war commenced.

During the war collective bargaining, of necessity, was hampered and restricted by the existence of the War Labor Board and by the limitations of national wage and labor policies. I say that not at all in criticism of the Board and not necessarily in criticism of any person and policy, but merely as a recognition of the fact that the exigencies of war imposed some very extensive restrictions upon free collective bargaining.

With the termination of the war, the termination of a period in which wages had been under sharp and rigid controls while price levels had moved upward, a period in which employee grievances had been pent up without adequate

recourse for expression or solution—it was unavoidable that tensions should develop. I regret to say that the attitude of management was extremely provocative. In industry after industry, in steel and auto, in electrical appliances and farm equipment, in many others, Government stepped in, used its best efforts on conciliation and mediation, suggested compromises and solutions. In every instance the unions cooperated and expressed a willingness to accept the proposals of Government; in every instance management rejected all proposed solutions and precipitated strikes. In our steel negotiations management twice refused even the courtesy of a meeting with the Secretary of Labor.

I bring these facts to your attention in part as a further comment on the gross distortion of the facts which is implied in the insistence of those who sponsor the bills before you on directing their attack against labor. But I also wish to impress upon you the extent to which it is quite fair to say that in many of the major industries organized since the advent of CIO the course of history has been such, the attitude of management has been such, that the true fruition of collective bargaining has not really been possible.

In this, the second year after the close of World War II, we have for the first time some indication of the possibilities of real collective bargaining in these important industries.

Certainly the CIO has at all times in its history been prepared, willing and anxious to render every cooperation in the stabilization and advancement of collective-bargaining relations in this country. It was for that reason that our unions were prepared and willing to accept the recommendations made by Government in the 1946 negotiations. Is it for that reason this year that when the representatives of the United States Steel Corporation made their request for an extension of the contract to permit more deliberate discussion of the many issues to be ironed out, we willingly acceded to the request. So long as there is indication of willingness on the part of management to meet and enter into discussion in good faith on the problems of the workers in their industries, and to seek cooperatively solution of those problems, our organizations have been and are at all times prepared to meet management more than half way.

So it is that I say that in this and the years immediately ahead—barring intemperate and ill-considered action by Congress—there is for the first time promise of developments and maturity in the collective-bargaining process in those industries recently organized.

I say barring intemperate and ill-considered action by this Congress because there are among the bills before you proposals which fly in the face of the lessons taught by the experiences of those industries in which organization and collective bargaining have achieved a measure of stability and maturity.

Proposal to bar all forms of union security

You have, for example, the proposal of Senator Ball to bar and outlaw any form whatsoever of union security. The bill is commonly referred to as the one attacking the so-called closed shop. Actually it includes in its sweep all of the contracts covering some 75 percent of workers under collective-bargaining agreements—over 10,000,000 workers—which include a union security clause. Its prohibitions cover the maintenance-of-membership clause, for example, under which the decision to join or not join the union is left entirely in the hands of the individual worker, with only the requirement that when he chooses to join he does so in full acceptance of the requirement that he maintain his membership for the duration of the collective-bargaining agreement. Four million workers are covered by maintenance-of-membership clauses today.

A union security clause, as our history has revealed, is a logical fruit of the full acceptance by the employer of the principle of collective bargaining. By law the union designated as the majority representative is required to speak and act not merely on behalf of its members but without discrimination on behalf of all employees. In practice and in fact no employer would dare suggest that benefits achieved by the union should be limited to its membership. As a matter of morality and justice the union security clause embodies the principle that those who share in the benefits should also share in the responsibilities. As a matter of extension and application of the principles of democracy the union shop embodies the principle that all of the workers who live and work under the collective-bargaining agreement should participate in the organization which represented them in the formulation of that agreement and should share in the obligations and duties of citizenship in the community which constitutes the factory or plant.

As a matter of sound administration of the collective-bargaining agreement, the union security clause embodies the principle that the union should be stabilized and accepted for the duration of the agreement, that organizing activity by the union itself should be rendered unnecessary or by rival union should be rendered ineffective for the life of the contract, so that the parties may devote themselves to the primary task of enforcing and applying the contract and making it work in the interests of continuous production and efficiency.

As a matter of historical experience in the field of industrial relations, the characteristics of industries in which collective bargaining has reached the maturity symbolized by a union shop arrangement indicate that these are industries in which collective bargaining is in the main most fruitful, most productive of industrial peace. No one can suggest that any one factor eliminates strikes or creates strikes. But it is significant that when in 1945 the national average of man-days lost in stoppages with relation to man-days worked was 0.47 percent, the corresponding figure for some typical industries with long-standing closed-shop traditions included 0.12 percent for the hosiery industry, 0.18 percent for the men's clothing industry, 0.24 percent for the silk and rayon industry.

Some of you are perhaps familiar with the study of Rev. Jerome Toner which contains one of the most complete analyses known to me of the operation of the closed shop in American industry. Let me cite a few of Father Toner's conclusions:

"1. Labor relations are considerably smoother as a result of the closed shop.

"2. Trade-unions have demonstrated genuine responsibility under closed-shop contracts, and have contributed substantially to the improvement of production.

"3. The closed shop will probably be the rule rather than the exception within the next decade."

There was a time when those who sought to outlaw union security used as their pretext certain isolated abuses of the closed-shop clause. I would be the first to agree that there is no institution in a democracy which is perfect and in which no single abuse can be found. I would note that insofar as the union security clause is concerned every evil that has ever been cited relates solely to the closed shop and solely to the closed shop clause in certain special circumstances. I would note that the proposed legislation now before you, by virtue of limitations on Federal power, operates primarily in the mass production industries in which, in the main, the closed shop does not at all prevail. The proposed legislation will scarcely, if at all, affect those areas in which the isolated instances of abuse have most frequently been cited. You would thus find that the fire in the outhouse has been made the pretext for destruction of the main dwelling.

All of these considerations I would call to your attention were it not for the fact that this year the sponsors of this measure have developed a new and, in my judgment, much more frank declaration of their purpose. This year the admitted objective is the weakening of the labor movement. This year it is stated more frankly than ever before that in the judgment of those sponsoring the measure the aim of Government policy must be the weakening of labor unions.

For purposes of your analysis of the validity of the assumptions and premises underlying this line of argument, I can only refer you back to some of the considerations which I have already presented—present profit trends, present price trends, present wage trends, present industrial and financial monopoly trends—and to a consideration of the experience of the 1920's. Do the facts indicate the necessity or the desirability of a governmental policy to weaken unions? Does experience, morals, justice, or economics suggest that what is needed is a weakening of unions? All these considerations, on the contrary, indicate that the dangers are all in the other direction.

It is a simple thing for Senator Ball to point to a strike in the steel industry, in the auto industry—yes, even in the coal industry—and say that since a union is strong enough to make such a strike effective what is required is a weakening of a union. Logically it would seem much more valid to suggest that the answer is a total destruction of unions. Clearly if there were no effective organizations through which workers could make and seek to effectuate their demands for decent working conditions, strike action would be extremely difficult. If it is assumed that the way to prevent strikes is to so weaken unions as to make strikes more difficult, why stop at any point?

If, on the other hand, you gentlemen are willing to examine the picture objectively, isn't it an obvious fact that it always takes two to make a strike? Isn't it an obvious fact that a strike is avoided if either the union or the em-

ployer is willing to yield, or if the two meet part way? Can you say, Senator Ball, that it is an obvious fact in today's circumstances that the union is and has always been the unyielding party and that therefore it is clearly the union that must be weakened in order to compel it to yield?

When the United Steelworkers of America yielded to the President's proposal in 1946 and the steel industry was adamant and refused to compromise, was it the union which was unyielding and uncompromising?

When the United Automobile Workers in 1946 yielded to and were willing to accept the proposals of the President's Fact-Finding Board and management balked, was it the union which was arrogant and uncompromising?

When the United Electrical Workers sought to settle their problems on the basis of governmental recommendations and the Westinghouse Corp. adopted so provocative and arrogant an attitude that two of the foremost labor experts in our Nation seeking conciliation of the dispute were forced to express public condemnation of the company's attitude, was it the union which was adamant and unyielding?

Do these experiences call for measures to weaken unions as a means of preventing the strikes? Although we do not recommend such action, why should they not rather evoke from Senator Ball proposals to weaken the position of management? Why do they not evoke from Senator Ball condemnation of the excessive strength reposed in management and a search for means of reducing that strength because of the irresponsible use of uncontrolled power exemplified by these experiences?

Proposal to prevent industry-wide bargaining

Nor is this the only example of legislation before you which, in a manner which borders on the irresponsible, proposes to fish in troubled waters, to disrupt and confuse a situation which might otherwise hold great promise of development of clarification and understanding. I would direct your attention, in addition, to the proposal to outlaw any coordinated collective bargaining program addressed to more than one employer in the same industry.

Let me give you one simple example before I discuss some broader implications. One of the difficult problems which has for years tormented the steel industry has been the wide variety of job titles, job rates, job duties. The industry has labored under uncoordinated, unscientific accumulations of literally thousands upon thousands of different job titles. Assigned to these jobs were rates which were merely the process of historical accumulation, not of scientific evaluation. The industry was plagued; the union was plagued. Workers were displeased with manifest inequities among their respective rates, with lower rates paid for jobs clearly higher in value than others, with varying rates paid for the same jobs in the same or related mills, and with many other aspects of a complex picture without rhyme or reason.

So we, the United Steelworkers of America, representing the employees in the industry, acting pursuant to War Labor Board suggestion, sat down with representatives of major companies in the industry to solve this problem once and for all. Our representatives labored for a period not of days, not weeks, not months, but years. Within the last month the fruits of this labor insofar as the various subsidiaries of the United States Steel Corp. are involved were brought to light. The program of uniform evaluation and careful appraisal is being applied today as equitably as possible to other areas of the industry.

Industry welcomes this opportunity to bring reason and order into an area of confusion. Labor welcomes it. The bill before you would have government condemn it.

The bill has been widely designated as one to prevent industry-wide bargaining. If that were its sole effect it would be sufficiently subject to justifiable condemnation. You have already heard employers who have appeared before you to explain how valuable in their industries has been the stabilizing experience of industry-wide bargaining. It is an interesting comment that among those employers who have expressed their support for the bill before you, not one operates in an industry where industry-wide bargaining is in effect.

A recent study sponsored by Princeton University stresses the important values of industry-wide bargaining. This study concludes that this form of bargaining produces results which are "more sensible and farsighted, taking in the economic interest of the industry as a whole."

Let us recognize several basic facts in connection with this proposal: Is it calculated to promote industrial peace? It rejects any possibility of settlement

of collective-bargaining relations in an industry as a result of a single major negotiation, the establishment of a pattern, or any other device calculated to promote uniformity, stability, and prompt over-all disposition of the collective-bargaining problems of the industry. All this it rejects in favor of the encouragement of hundreds or thousands of separate negotiations, separate disputes, separate strikes (if they should develop). Does that reflect progress toward industrial peace?

Is it calculated to minimize the effects of a strike upon our economy? Hasn't the war experience as well as the experience of the months succeeding the war yet established the extent to which our economy is interrelated so that it is not solely the industry-wide stoppage which impedes wide areas of production? Haven't we yet learned to realize the extent to which single stoppages can operate with bottleneck effect to impede large areas of our economy? Remember the dockmen's strike in New York City? Remember the effects of stoppages in parts plants upon major automobile production plants? Are we prepared to say that it is the wise policy to prohibit generalized large-scale settlements and solutions and to insist upon scattering our problems and promoting continuous dangers of bottleneck difficulties throughout the entire year?

I cannot and do not say to you that industry-wide bargaining, so-called (and there is very little that can be said to conform to that title in major American industry today), is at all times and under all circumstances the wisest rule. I can say that in a general evaluation the considerations from the point of view of public welfare favor rather than oppose it. I can say that experience and history favor rather than oppose that type of negotiation. Whether it is appropriate for specific industries and under specific circumstances can be determined only in the light of the facts of those industries and circumstances.

But I can say, and without hesitation, that a Government policy which condemns in advance any and every effort to establish or promote uniformity and stability in working conditions among the members of any industry is a thoroughly irresponsible suggestion and one which can emanate only from ignorance of the realities of industrial life or from a deliberate desire to promote confusion in the collective-bargaining process.

Permit me to make one final observation on the proposal embodied in this bill. In my judgment it would be far more accurate to refer to it as a bill to prohibit the existence of any national unions. It outlaws any attempt by the members of local unions in any industry to organize into effective national organizations for consultation and formulation of common policy. This it condemns as a conspiracy. In effect it limits the organization on any national basis to the status of a legislative and informational service.

If that is the intent of its sponsors, let us at least recognize that issue and face it squarely. It is part and parcel of the same intent so frankly admitted by Senator Ball in other respects—an intent to weaken labor organizations. If that is so, we are once more returned to the basic issues which must underly an evaluation of all these bills. And in concluding my testimony before this committee I feel it important to return to those issues.

The basic issues involved

The bills before you can be supported only by a premise that the ills of our economy, the ills of our Nation, reflect a need—and solely a need—for weakening labor at the bargaining table, for weakening labor at the expense of management, for compelling labor to accept from management without resistance the answer "no." To make that evaluation you will have to make it in blunt and uncompromising economic terms. It will be of no avail to hide behind a smoke screen of reference to jurisdictional strikes, sympathy strikes, secondary boycotts, and other literally fringe phenomena. Between January and June of 1946, of workers involved in all strikes four-tenths of 1 percent were involved in jurisdictional strikes; eighty-three and nine-tenths percent were involved in strikes in which the issues related to wages, hours, and working conditions.

If you are prepared to say that the time has come to weaken unions, then you will have to be prepared to say that the American working men and women have through their unions or otherwise achieved more than you are prepared to concede to them as their right with respect to wages, hours, and working conditions. If you are prepared to embark on a program of consciously weakening labor at the bargaining table, then you are prepared to say that the strength of Government must be thrown behind those employers who are today prepared to protect their present and future profit levels against any demands for wage increases.

If that is your program, then we are truly embarking upon a new and dangerous era in the history of American government. Not merely will government be preparing to sit by and permit a repetition on a grander scale of the trends which led to the crash of 1929; government will be actually taking an affirmative and active role in impelling the country in the direction of such a catastrophe.

APPENDIX A

BILLS PROPOSED IN THE SEVENTY-FIFTH TO SEVENTY-NINTH CONGRESSES TO CHANGE EXISTING LABOR LEGISLATION

1. Those proposals which seek to regulate the internal affairs of labor organizations and in that way to undermine their bargaining strength :

75th Cong.	76th Cong.	77th Cong.	78th Cong.	79th Cong.
H. R. 6148. H. R. 6456.	H. R. 4910. H. R. 8750. S. J. Res. 275.	H. R. 4139. H. R. 4392. H. R. 5015. H. R. 5148. H. R. 5149. H. R. 6068. H. R. 6149. H. R. 6154. H. R. 6444. S. 2042.	H. R. 804. H. R. 1483. H. R. 1781. H. R. 1782. S. 1307. S. J. Res. 9.	H. R. 354. H. R. 544. H. J. Res. 318. S. 1642.

2. Those proposals which attack the right to strike, either through outright prohibition or through cooling-off legislation :

75th Cong.	76th Cong.	77th Cong.	78th Cong.	79th Cong.
H. R. 6456. H. R. 7598. H. R. 7831.	H. R. 4906. H. R. 4910. H. R. 7440.	H. R. 1407. H. R. 2662. H. R. 2695. H. R. 2850. H. R. 4139. Riders to— H. R. 4965. H. R. 5924. H. R. 6057. H. R. 6066. H. R. 6068. H. R. 6101. H. R. 6149. H. R. 6826. H. J. Res. 247. S. 114. S. 2042.	H. R. 147. H. R. 992. H. R. 1486. H. R. 1487. S. 1068. S. 1069. S. 1070.	S. 1656. S. 1661.

3. Those measures designed to subject the legitimate concerted activities of labor organizations to the supervision of Federal courts through repeal or amendment of the Norris-LaGuardia Act, the application of the antitrust laws to labor unions, prohibition of picketing through judicial expansion of concepts of coercion and force, subjecting unions to damage suits in the Federal courts :

75th Cong.	76th Cong.	77th Cong.	78th Cong.	79th Cong.
H. R. 5933.	H. R. 7440.	H. R. 1407. H. R. 2694. H. R. 4139. H. R. 5218. H. R. 5259. H. R. 6066. H. R. 6088. H. R. 6149. S. J. Res. 144. S. 2347.	H. R. 653. H. R. 1472. H. R. 1487. H. R. 1694. H. R. 1866. S. 189. S. 712.	H. R. 32. S. 6. S. 371. S. 1644. S. 1647. S. 1656.

APPENDIX B

PRICES, PROFITS, AND WAGE TRENDS IN LEADING CORPORATIONS IN FOOD PROCESSING, IRON AND STEEL, TEXTILES, AND MEAT

Information is supplied for most of the leading corporations in the industries of food processing, iron and steel, textiles, and meat. This includes a comparison of the hourly wage increase, the price increase needed to offset the wage increase assuming no price absorption, and the actual wholesale price increase. It also shows a comparison of the profits in food and textiles for the first 9 months of 1945 and 1946, and a comparison in meats for 12 months to October 31, 1945, and 1946. For iron and steel two sets of comparisons are given, for the third and fourth quarters of 1945 and 1946, and for the full years 1945 and 1946. For each of these groups of industries there is also given the percentage of net income to net worth for the average of 1936-39, average of 1942-45, and average 1946. The food-processing industry is treated at somewhat greater length as follows:

PRICES, PROFITS, AND WAGE TRENDS IN FOOD CORPORATIONS

Those who charge that wage increases have brought on inflationary price changes during the past year fail to examine the actual facts. Between January 1945 and November 1946 wholesale prices of food commodities increased almost 58 percent. During this same period average hourly earnings of workers in food processing industries increased 21 percent. A rise of 21 percent in hourly earnings, contrary to popular belief, doesn't require a similar price increase. According to the Census of Manufacturing in 1939, labor costs represent less than 9 percent of the total value of the product. Therefore a 21-percent increase in hourly earnings would entail less than a 2-percent increase at the wholesale level, which could be absorbed out of profit margins without necessitating any price rise.

But instead, food processors increased food prices 58 percent. Thus the bottom of the pyramid was started. Wholesalers increased food prices almost 30 times more than necessary to offset wage increases. The jobbers, distributors, and retailers receive these food products. They add their profit margins and thus build the pyramid of unnecessary price increases.

The effect that this tremendous increase in prices has had upon profits is fantastic. Most of the basic food companies show profit increases in 1946 of two and three times, or 100 to 200 percent above the very prosperous year 1945.

Let us take just one example of a typical corporation. (The same kind of information is attached in tables for an additional nine food corporations.) The Ward Baking Co. during the year 1946 earned profits of \$3,643,000. This is an increase of 225 percent over the \$1,123,000 earned in 1945, 1946 profits of Ward represent a 20.4 percent return on the net worth of the company. During the war years which were highly profitable for most companies, the Ward Baking Co. had a return on net worth of slightly less than 6 percent. During the prewar years of 1936-39, excluding the depression year 1938, the Ward Baking Co. earned 3.3 percent on its net worth.

Food

WARTIME PEAK (EARLY 1945) TO NOVEMBER 1946

Hourly wage increase	Price increase needed to offset wage increase assuming no price absorption	Actual wholesale price increase
	<i>Percent</i>	<i>Percent</i>
20.9 percent.....	1.8	57.9

Food—Continued

PROFITS, FIRST 9 MONTHS OF 1945 AND 1946

Company	1946	1945	Percent of increase
Continental Baking Co. ¹	\$7,510,206	\$2,493,031	201.3
United Biscuit Co. of America.....	3,004,000	985,000	205.0
Beatrice Foods Co.....	4,003,000	1,543,000	159.4
National Biscuit Co.....	10,828,000	7,823,000	38.4
General Baking Co.....	2,253,000	1,321,000	70.5
Wesson Oil & Snow Drift Co.....	5,212,000	2,315,000	124.8
National Tea Co.....	1,878,000	636,000	195.3
Food Fair Stores.....	2,937,535	747,343	293.3
Sunshine Biscuit.....	4,023,529	1,808,404	122.6
Ward Baking Co. ¹	3,642,738	1,122,650	224.5

PERCENTAGE OF NET INCOME TO NET WORTH—FOOD

	Average, 1936-39	Average, 1942-45	1946
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
National Biscuit Co.....	11.0	8.9	² 14.8
United Biscuit Co. of America.....	7.7	8.7	² 21.6
Continental Baking Co.....	8.6	11.0	² 24.2
General Baking Co.....	9.7	7.9	² 12.7
Ward Baking Co.....	3.3	6.9	³ 20.4
Wesson Oil & Snowdrift Co.....	⁴ 9.3	6.4	² 16.4

¹ Year to Dec. 28.² Net income for first 9 months projected on annual basis. Net worth taken to be year 1945.³ Year to Dec. 31 or fixed point.⁴ Net worth 1946.⁵ 1939 excluded.*Iron and steel*

JANUARY 1945 TO NOVEMBER 1946

Hourly wage increase	Price increase needed to off- set wage in- crease, assum- ing no price absorption	Actual whole- sale price increase
	<i>Percent</i>	<i>Percent</i>
9.9 percent.....	1.9	16.7

PROFITS, THIRD AND FOURTH QUARTER 1945, COMPARED TO SAME FOR 1946

Company	1946	1945	Percent of increase
Youngstown Sheet & Tube.....	\$9,950,762	\$3,504,303	183.9
Republic Steel.....	11,578,125	3,097,192	273.8
Inland Steel.....	10,628,577	4,648,610	128.6
United States Steel.....	64,544,989	25,861,683	149.8
Wheeling Steel.....	4,269,989	1,616,661	164.1
Jones & Laughlin.....	7,697,540	3,711,069	107.4
National Steel Co.....	12,775,307	4,234,593	201.7

PROFITS, 1945 COMPARED TO 1946

Company	1946	1945	Percent of increase
Youngstown Sheet & Tube.....	\$14,254,905	\$7,512,250	89.8
Republic Steel.....	16,033,468	9,453,443	69.6
Inland Steel.....	15,556,897	9,861,210	57.7
United States Steel.....	88,683,530	58,015,056	52.0
Wheeling Steel.....	5,372,910	3,950,252	36.0
Jones & Laughlin.....	10,554,084	8,082,082	34.3
National Steel.....	20,461,651	11,117,764	84.0

Iron and steel—Continued

PERCENTAGE OF NET INCOME TO NET WORTH

Company	Average, 1946 ¹	Average, 1946	Average, 1942-45	Average, 1936-39 ²
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Youngstown Sheet & Tube.....	³ 12.4	8.9	5.1	6.9
United States Steel.....	³ 12.3	8.4	4.5	4.1
Republic Steel.....	³ 8.6	5.9	4.6	⁴ 4.2
Jones & Laughlin.....	³ 7.7	5.4	4.4	2.4
Inland Steel.....	³ 17.4	12.7	8.9	13.6
National Steel.....	³ 15.2	12.2	7.0	11.9
Wheeling Steel ⁵	³ 9.3	5.8	4.7	5.9

¹ Net income for third quarter projected on annual basis. Net worth taken for year 1945 unless otherwise specified.

² 1938 excluded.

³ Net income for third and fourth quarter projected on annual basis.

⁴ 1938 and 1937 excluded.

⁵ 1946. Based on 1944 net worth.

Textiles

WARTIME PEAK (EARLY 1945) TO NOVEMBER 1946

Hourly wage increase	Price increase needed to off- set wage in- crease, assum- ing no price absorption	Actual whole- sale price increase
	<i>Percent</i>	<i>Percent</i>
31.2 percent.....	6.7	31.8

PROFITS, FIRST 9 MONTHS OF 1945 COMPARED TO SAME FOR 1946

Company	1946	1945	Percent of increase
American Woolen Mill ¹	² \$22,398,178	\$8,301,140	169.8
Pacific Mills.....	4,648,000	1,256,000	270.1
American Viscose Corp.....	8,149,612	3,475,321	135.9
Celanese Corporation of America.....	11,573,000	5,630,000	105.0
Industrial Rayon ¹	8,822,041	2,438,313	261.8

PERCENTAGE OF NET INCOME TO NET WORTH, TEXTILES

Company	Average, 1936-39	Average, 1942-45	1946
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
American Woolen Co.....	³ 3.6	9.4	⁴ 28.5
Pacific Mills.....	³ 4.05	7.8	⁵ 21.4
American Viscose Corp. ⁶	(⁶)	5.9	⁵ 8.8
Celanese Corporation of America.....	11.0	11.0	⁵ 19.5
Industrial Rayon Corp.....	4.4	8.1	⁴ 28.3

¹ Year to Dec. 31.

² Reserve set aside included.

³ 1937 and 1938 excluded.

⁴ Year to Dec. 31 or fixed point.

⁵ Net income for first 9 months projected on annual basis. Net worth taken to be year 1945.

⁶ Registered with SEC in 1941.

Meats

WARTIME PEAK (EARLY 1946) TO NOVEMBER 1946

Hourly wage increase	Price increase needed to offset wage increase, assuming no price absorption	Actual price increase (wholesale)
22.9 percent	<i>Percent</i> 1.6	<i>Percent</i> 90.6

PROFITS, 12 MONTHS, TO OCT. 31, 1945, AND 1946

Company	1946	1945	Percent of increase
Armour	¹ \$30,291,000	\$9,173,000	228.3
Swift	16,395,000	12,304,000	33.2
Cudahy	6,781,000	2,505,000	168.3
Wilson	¹ 10,311,560	5,036,602	105.1

PERCENTAGE OF NET INCOME TO NET WORTH, MEATS

Company	Average, 1936-39	Average, 1942-45	1946
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Armour	4.2	6.8	15.7
Cudahy	3.4	8.1	16.0
Swift	4.6	6.2	6.1
Wilson	6.6	11.0	14.1

¹ Reserves set aside included.

MEMORANDUM ON BALL-TAFT-SMITH BILL (S. 55)

(Submitted on behalf of Congress of Industrial Organizations by
Lee Pressman, general counsel)

INTRODUCTION

In its broad outlines the Ball-Taft-Smith bill follows the major outlines of the Case bill which was vetoed by President Truman last year. It has not been modified to meet the objections noted by the President. It has made certain significant changes, all calculated to make it more oppressive. One, dealing with the registration of labor organizations, is made the subject of a new and separate section. Another, the outlawing of the check-off, is inserted by indirection and without any specific declaration or title indicating the change.

The bill does not conform to any consistent or unified pattern or outline. It is a conglomeration of a number of items related to each other only by their common antagonism toward the functioning of labor unions. Some of the sections are the product of historical accumulation, having been tacked on to the bill of last year at various stages in its passage through the House. An analysis of its provisions, therefore, is necessarily not an analysis of a coherent document but rather of a series of scattered but vigorous and destructive snipings at various portions of our national labor policy.

The major subject matters to which this memorandum will address itself are the following:

- I. Establishment of a Federal mediation board (title 1, secs. 1 and 2).
- II. "Cooling off" period (title 1, sec. 3).

III. Restrictions on welfare funds—outlawing check-off clauses (title II, sec. 201).

IV. Supervisory employees (title II, sec. 202).

V. Suits against labor organizations (title II, sec. 203).

VI. Outlawing of secondary boycotts (title II, sec. 204(a) (1)).

VII. Outlawing of strikes where Wagner Act protection is not available (title II, sec. 204(a) (2)).

VIII. Registration of labor organizations (title II, sec. 205).

1. CREATION OF A FEDERAL MEDIATION BOARD (TITLE I, SEC. 1)

The Ball-Taft-Smith bill proposes to substitute in place of the present United States Conciliation Service, a new agency to be known as the Federal Mediation Board. The new Board is to be composed of five members appointed by the President with the advice and consent of the Senate. The Board is technically to be "in the Department of Labor" but all mediation and conciliation functions of the Secretary of Labor, as well as those of the Conciliation Service, are transferred to the Board itself. The Board is given the duty of assisting parties to labor disputes in industries affecting commerce. It is empowered to offer its services on its own motion or the request of one of the parties. The bill contains, in addition, various suggestions as to assistance by the Board in voluntary arbitration procedures and related matters.

In its discussion of the functions and purpose of the new Board (except as related to the "cooling off" provisions discussed under a later heading) the bill offers no significant change as compared with the conciliation and mediation activities of the present United States Conciliation Service. The only apparent change which would be made is the substitution of a five-man board for the present single administrative head of the Conciliation Service.

It is not easy to discover what is the gain which is sought to be achieved by such a change. Mediation and conciliation are not processes which can be carried on by large boards as compared with individual mediators or conciliators. There are no matters involved which require judicial or quasi-judicial decision on which votes are to be taken. In the largest number of cases the administrative task involved relates primarily to the selection of the proper one or two individuals to be assigned to the task of mediating a specific dispute. For purposes of that selection not five but many, many times that number of conciliators and mediators must be available, both because of the number of disputes which may be under way nationally at the same time and also because the variety of problems and industries requires persons with a variety of background and information.

The selection of a duly qualified individual and his assignment to a specific dispute, however, is a task which scarcely seems suited for handling by a five-man board as opposed to a single administrative head.

It has been suggested that the establishment of such a board composed of men of stature would give to the conciliation operation stature such as to invite greater respect from all parties. This is a highly desirable result. However, it would seem much more likely that the respect and cooperation of the parties will depend on the caliber and stature of the individual assigned to the conciliation task in the particular dispute rather than on whether one or five men head the agency. It has been the practice of the Conciliation Service to invoke the services of prominent persons, not regularly on its staff, for assistance in major disputes. It would seem more likely that an expansion of this practice, together with an assurance of more funds so that men of high caliber may be available for regular service on the staff, would point the way toward maximum respect for Government conciliation.

11. "COOLING OFF" PERIOD (TITLE I, SECT. 3)

The bill provides that whenever the newly created Mediation Board offers its services in a "labor dispute affecting commerce," a set of prohibitions automatically come into effect. These prohibitions are to operate until the Board certifies that efforts at mediation are concluded or until 60 days have elapsed since the Board's proffer of service, whichever date occurs first.

During this period it is to be the duty of the employer to refrain from any lock-out and to restore and maintain the working conditions in existence prior to the dispute. It is the duty "of the employees and their representatives" to refrain from any strike.

The employer who violates these provisions is to be deemed to have engaged in an unfair labor practice under the National Labor Relations Act. An employee who violates these provisions is to lose his status as an employee for all purposes under the National Labor Relations Act, except when such loss of status terminates if and when he is reemployed by such employer.

Disregarding for the moment all of the basic questions which arise with respect to "cooling off" legislation generally, it is important to examine briefly exactly what is accomplished by the specific language in the present bill.

How long is the "cooling off" period?

The "cooling off" period under the present bill is not really limited to a 60-day maximum. It starts to run not from the time when the parties commence negotiations but from the time that the Federal Mediation Board offers its services. The Mediation Board is not required to offer its services at any particular time or even at the time that one of the parties requests those services. The only provision as to the Board's offer of its services is that contained in section II (b) which declares that the Board "may" offer its services either on its own motion or at the request of one or more of the parties.

Thus the parties may have negotiated for weeks or months before the Mediation Board decides to act. The entire period of preceding negotiation is not included in the "cooling off." One of the parties may have asked the Mediation Board to intervene and the Mediation Board may have delayed either for lack of personnel or for other reasons. All of that time is not considered part of the "cooling off" period.

It is quite well known that in normal periods, the Government conciliator is not involved in the negotiations from the start. As a matter of fact, such a procedure would not be at all desirable.

It is equally well known that, because of pressure on its personnel, it is not at all uncommon once the Conciliation Service is called into the picture to find that the conciliator is compelled to spend a short time on the scene of the labor dispute and then because of the pressure of other equally important obligations is compelled to leave and return at varying intervals which may range weeks apart. If by operation of the law such as that now proposed a 60-day period were set as the date after which strike action might be expected then it might equally well be expected that the conciliator will be careful not to offer his services until he has cleared other matters out of the way. Thus the commencement of the 60-day period would be put off until the conciliator was willing and able to make his services available.

Thus the right of the workers to strike and the planning and preparation necessary in advance of the strike could be tied up almost indefinitely depending on the whim and the schedule of the conciliator. It may be argued that if the Mediation Board delays in offering its services, the employees are free to strike. This, of course, would be technically true but realistically impossible. If the employees call the strike there could be little doubt that that would serve as an effective means of compelling the conciliator to come in immediately. The net result however, is that any strike which the employees might call would be constantly subject to the probability that the Mediation Board would then offer its services and the strike would have to be called off. In other words, so long as the Mediation Board has not offered its services a strike realistically speaking would be almost impossible, since the Mediation Board could make continuance of the strike illegal simply by offering its services.

Thus the bill sets up a "cooling off" period which may be just as long as the new Mediation Board wishes to make it.

The penalty provisions

The penalty provisions are extremely unfair. Actually they impose a very heavy burden on employees and virtually none on the employer.

Although the bill purports to impose relative obligations on both employer and employee, the employer who fails to perform his obligations is subject only to unfair labor practice under the National Labor Relations Act. The employee who fails to perform his obligations loses his job.

Thus for the employer the only threat is if during the 60-day period he acts improperly a complaint may be filed with the National Labor Relations Board. He may be notified to attend a conference to discuss his law violation. Some days or weeks later a complaint may be issued by the Board inviting him to a formal hearing which in turn is set for at least 10 days after issuance of complaint. The hearing will be held, a record prepared and weeks or months later

a trial examiner's report issued. Objections will be filed to the report and many months later a Board order will be issued. That order may be taken to court and at long last anywhere from 1 to 2 years after the employer's law violation a court order may require him to cease and desist from his law violations.

On the other hand, if an employee violates his obligations during the 60-day period he is without a job the next day if the employer so desires.

In other words with a very current and active labor dispute in which the issues are being debated daily and in which mobilization of support, building of employee morale, preparations for strike are all matters of day-to-day variation and activity, the employer is free to act as he pleases to affect the current situation and be subjected only to a possible remedial order a year or two later. The employee has his hands tied under penalty of immediate loss of job. The employer is given the power of immediate self help directed against his workers. The employee is given only a long and dilatory legal procedure.

An antiunion weapon for the employer

As a matter of fact, the employer is given an even more potent weapon. He is permitted to pick and choose among his employees, eliminate the best union man if he so desires, and reemploy those whom he feels will be more amenable to his pressures. He is given in essence the power if he so desires to destroy the union.

He is given this power moreover, even if the union is not involved in or at all guilty of any law violation. If, for example, the union should refuse to call a strike and a group of employees in a particular plant should on their own declare an unauthorized strike within the 60-day period, the employer would be free to take action to eliminate the union itself from his plant. The employees in question lose their status not merely for purposes of discharge but for purposes of the right of the union to act as collective bargaining agency.

If the employer, from among the wildcat strikes, proceeds to discharge those favorable to the union, then the union would no longer be the majority representative. Thus by selecting those employees who might favor another labor organization, the employer would be in a position to decide which labor organization would represent his workers. He would be in a position to eliminate the very union which complied with its obligations.

This would be an invitation and encouragement to employers to station and encourage company agents among the employees with an eye to provoking an unauthorized stoppage so that the employer could then get rid of the union. It would also be an encouragement to a rival labor organization to encourage, instigate, and provoke a local stoppage as a means of eliminating the employees who might favor the existing union.

The foregoing indicates some of the evils and problems arising out of the language of the provisions of section 3. More basic perhaps than any of these comments, however, is a consideration of the significance of any attempt to impose a rigid prohibition on strike action during a so-called "cooling off" period.

Are "cooling off" periods needed?

Are such provisions calculated to promote industrial peace? It would seem fair to seek the answer in facts, not in speculation.

What are the facts?

Virtually every labor dispute in the postwar period has involved negotiations for far more than the proposed 60-day period.

Every recent labor dispute has involved negotiations for far more than the proposed 60-day period. In the steel strike the union's initial proposals were made in September 1945 and the strike commenced on January 21, 1946. Far more than 60 days intervened between the initial presentation of union demands and the official calling of a strike in the General Motors situation, in the electrical industry, and in all the others. It has not been the absence of delay which has caused the strikes. Basically the cause has been that workers have asked for wage adjustments consonant with postwar living costs and the Nation's productive ability, and the employers have been reluctant to make any concessions out of their current high-profit levels. A 60-day delay contributes nothing to the solution of that problem.

This section far from leading to industrial peace would in fact promote strikes. Our bitter experience with the Smith-Connally Act should forever impress upon us the futility of using the waiting period device as a means of mini-

mizing labor disputes. Like the Smith-Connally Act, this provision draws virtually from an insult. The insult is the assumption that workers enjoy striking, that they rush into a strike with a sort of impetuous glee. A strike for a worker is a bitter and desperate experience. He is forced to make a decision that it is preferable to go hungry rather than to accept unfair terms and conditions of employment. A strike is not the product of a momentary anger but rather of a deep-seated conviction and of a carefully deliberate choice. No waiting period is necessary to halt the speed of a strike because life itself, the economic circumstances in which each individual worker finds himself, insures that the decision to strike is a calm and careful one. The assumption in the present provision that workers strike improvidently is as objectionable as the assumption in the Smith-Connally Act that workers are unpatriotic.

Compulsory "cooling off" promotes industrial strife

This provision will, however, encourage strikes in two very obvious ways. In the first place, it says to every employee who is engaged in a labor dispute that a strike is a federally approved method of resolving it. It is a dangerous invitation to strike after the exhaustion of the waiting period even when a strike might be premature or even inappropriate.

Union leaders seeking delay for amicable discussion may find themselves overruled by a membership which has been told by the Government that 60 days in the appropriate duration of the collective bargaining procedure. In short, this legislation will inevitably produce the impression that a strike is a federally created privilege to be automatically enjoyed by all workers at the price of waiting 60 days.

The employer, on the other hand, finds himself under this legislation free of any strike pressure for a period of 2 months. Since the threat of striking is the most fruitful single source of adjustment of labor disputes the enforced postponement of the date when this threat can be made effective will in itself produce an impasse in the collective bargaining procedure. In addition, it should be borne in mind that the employer under this provision would not only be tempted to refrain from settling with the union but actually to provoke a strike. If an antilabor employer under this provision can create an impasse and force the employees to strike he is free to discharge all of the strikers with impunity. Since the employees thus discharged not only lose their reinstatement rights but their right to choose a bargaining representative, the employer could destroy the union overnight by provoking it into a premature strike.

This legislation then is objectionable because to the employees it serves as an official license for striking and to the employer it removes the pressure for seeking agreement with the union and invites him to provoke a strike in order to smash the union.

Compulsory "cooling off" favors the employer and weakens the union

A union may be faced with the necessity of striking in a particular situation at some period shorter than the 60-day period laid down in the legislation. The 60-day period imposes upon a union all of the weakening and limiting effects which flow from an arbitrary and unnecessary prolongation of a period of fruitless conference where employer attitudes are clear. The practical facts connected with the planning and organization of a strike must be kept in mind. A strike involving thousands of workers, such as is characteristic of modern-day major enterprises, is not a project of a single day's planning. It involves a process of organization and dispensation of information and guidance so that issues may be fully understood by all workers. The maintenance of the strike depends at all times on the morale and understanding of the participants. Strikes cannot be called on one day, the men sent back the next, and then the strike continued on the third. When an employer's obstinacy is clear and the issues are sharp, employees who wish to exercise their inalienable rights cannot be kept in a state of confusion or of uncertainty. Timing of a strike, if it is to be effective, is like the timing of any operation which requires the coordinated efforts of many thousands of individuals. It must be accomplished at a time all efforts are in a position to be coordinated and when all individuals are in a position to act most effectively.

Moreover, the right to strike can only be meaningful when its exercise is effective. Unless a worker is free to exercise the right to strike at a time when the employer is most sensitive to this economic pressure he is to that extent being denied a basic constitutional right.

"Cooling off" hinders collective bargaining

The principle of a legislatively decreed "cooling off" period carries another basic evil for the collective bargaining process.

Most present-day collective bargaining contracts of any major proportions contain a provision requiring a certain period of notice and negotiation prior to the termination date. Such a provision reflects the considered judgment of the parties as to how long a period of negotiation is reasonable and necessary. It is a period during which not only does a strike continue to be prohibited by the terms of the contract but also the contract itself remains in full force and effect.

If now the Congress of the United States decrees that regardless of the presence of such a provision, nevertheless a Mediation Board by proffer of its services has the power and authority to compel an additional period of "cooling off" and negotiation, then at least two consequences are probable:

(1) The incentive to prompt bona fide negotiation and settlement during the period of required notice under the contract is substantially diminished, since the employer is aware that for at least 60 days even after the conclusion of that period he has a governmental guaranty against any effective strike action. As far as the employer is concerned the law in effect has added at least 60 days to the life of the contract. For all practical purposes Congress might just as well pass a law stating far more simply that every contract is to be deemed to last 60 days more than its stated term.

(2) In the presence of a legislatively prescribed contract extension and negotiation period of 60 days the parties may well be expected in future contracts to omit the provisions on the same subject now contained in their agreements. Such provisions would no longer serve any function with respect to the commencement of the negotiations. The result would be that negotiations would no longer be carried on during the pendency of a contract with all terms and conditions of employment clearly spelled out and recognized. Negotiations will be carried on in the unhealthy atmosphere of a situation in which the collective bargaining has expired.

"Cooling off" and involuntary servitude

One final consideration should be borne in mind. Like all its predecessors section 3 contains protestations to the effect that it imposes no restriction on the right of individual workers to quit their jobs. The simple fact is that the right of individual workers to quit their jobs has meaning only when they may quit in concert, so that in their quitting or in their threat to quit they have a real bargaining strength. That is what is meant by collective bargaining. It is thus hypocritical to suggest that a prohibition or restriction on the right to strike is not in practical effect a prohibition on the right to quit individually. The 60-day "cooling off" proposal is precisely that. It is a 60-day negation of effective exercise of a basic constitutional right.

In this connection it is interesting to recall the words of the Federal district court which has held the Lee Act unconstitutional in *U. S. v. Petrillo*:

"Under the thirteenth amendment the right of any worker to leave his employment at will, or for no reason at all, is protected and that right is violated. The freedom to quit and refuse to undertake work may as readily be exercised through a group organization as individually."

III. RESTRICTIONS ON WELFARE FUNDS—OUTLAWING THE CHECK-OFF (TITLE II, SEC. 201)

This section of the Ball-Taft-Smith bill makes it a penitentiary offense for an employer to pay or agree to pay to a representative of any of his employees, and for a representative of any employees to receive or agree to receive from the employer, any money or other thing of value. Certain exceptions are made to this prohibition, including payments made to benefit or welfare funds, provided such funds are jointly administered by employer and employees. Violation is not merely a criminal offense but, in addition, the Clayton Act and the Norris-LaGuardia Act are amended to permit injunctions to restrain violations of the proposed section.

Outlawing the check-off by indirection

It should be noted at the outset that in at least one respect this section is typical of the technique, characterizing so many proposed labor bills today, of including hidden jokers in antilabor laws. This section has been widely considered and discussed, as part of the Case bill of the last session of Congress,

as a provision aimed at barring welfare funds under sole union control. The Case bill of last year, however, declared specifically that in outlawing payments from employers to labor organizations, it contemplated the welfare-fund issue alone and did not bar the check-off of union dues. Without prior announcement or discussion the Ball-Taft-Smith bill omits this provision, and thereby seeks, in the guise of dealing with welfare-fund problems, to outlaw the check-off.

There is an interesting irony in the proposal in this respect. No other types of deductions are barred. The levy of the loan shark on a worker's wages, the deductions of the company for company stores and other company charges, all of these fail in any way to move the sympathy or ire of the sponsors of the bill. Only the provision for expediting payment of the worker's dues to his own organization, his own union, is to be outlawed.

We will not attempt to discuss at great length the multitudes of considerations of policy, convenience, and expediency supporting the check-off provisions. In most instances the check-off exists solely as an accompaniment of and a necessary corollary to a union security clause. In such instances the only dues checked off are those of workers whose union membership must be maintained by contract requirement. Under these circumstances the check-off embodies merely the convenience of automatic performance of an obligation of the worker.

The Ball-Taft-Smith bill pretends not to deal with the issue of union security clauses. It pretends to leave that to the separate considerations arising under S. 105 introduced by Senator Ball. Yet in this provision it substantially undermines the operation of any union security clause. If it is desired to debate and consider the merits of union security, as is necessitated by S. 105, that debate and consideration may be undertaken. But it is not quite consistent with complete frankness and honesty to pretend not to be dealing with that subject while in essence accomplishing the same objective.

Values of the check-off

On the level of the practicalities of industrial relations, the check-off serves a very important and healthy function, not merely undenied by the employer, but frequently urgently advanced by the employer. These values may be exemplified both in the establishment which has a union security clause and the establishment which does not.

1. *As an aid to union security.*—In the plant which operates under a union security clause it is the desire both of the union and of the employer not to be involved any more than absolutely necessary in the necessity for proceedings leading to the dismissal of a worker who has failed to maintain, as required by the contract, membership in good standing in the union. In the absence of a check-off such problems may arise with considerable frequency, on the basis of the same considerations which may arise anywhere in our society in connection with difficulties in collections of obligations from individuals. Through the check-off, this problem held to an absolute minimum, since advance, automatic assurance is made available that issues relating to failure to maintain membership in good standing will not arise insofar as questions of dues payment are concerned.

That most employers appreciate these values and, in fact, prefer the check-off with or without union security to union security without the check-off is indicated by the issue which has been posed with some frequency in recent months in collective-bargaining negotiations in which the employer has offered a universal check-off in preference to union security, contending that he prefers the relatively easy, automatic, mechanical process of the check-off to being forced to deal with problems relating to discharge of recalcitrant individual employees.

2. *As an aid to efficiency and order in the plant.*—Both in establishments operating under union security clauses and in those not operating under such clauses the check-off serves another significant and constructive function. In the absence of this automatic, simple, and effective machinery readily available to the employer, the only alternative offered to the union is the collection of dues through its grievance men, its local union officers, and other similarly designated employees elected or appointed by their local groups. Virtually the only opportunity available to these representatives to make regular contact with all of the thousands of employees in any given plant, who may live over wide geographical areas, is while at work or in related periods at or near the plant. Most employers do not feel that it is advantageous for productive efficiency to have employees circulating, distributing dues stamps, collecting dues money either during working hours or even during rest and lunch periods. Many plants have company rules against such activity during working hours. The difficulties of other con-

tacts among employees are such that, in the absence of a check-off the employees charged by their fellow workers with the duty of devising means for the collection of dues find themselves forced to resort to subterfuge or other evasion of such company rules as part of their regular program.

3. *As an aid to sound collective bargaining relations.*—There is a third and basic consideration which arises out of some of the factors cited in the first two lines of thought discussed. The effect of a denial of the check-off of the dues of union members in a plant where collective bargaining rights have been established is a denial of the relatively simple, efficient convenience embodied in the check-off and an insistence upon forcing the union into the difficulty, the wastefulness, the unnecessary expenditures of energies of employees whose attention might otherwise be devoted to constructive administration of the collective-bargaining contract. If we assume that the employer has accepted in good faith the principles of collective bargaining, has accepted the union as an institution and as the representative of his workers, as an organism with which he is prepared to live and cooperate during the term of the contract, then there is utterly no excuse for a refusal to make the administration of the contract and the operation of the employees' organization as efficient and as simple as possible. If the employees, by contract negotiated through their representative, express the desire that the employer cooperate to the extent of making deductions, which are themselves no expense to the employer, but merely to be taken out of the pay of the employees themselves and turned over to their organization, then a refusal on the part of the employer in the main can be born only of the desire to impede the union and unwillingness to render even a minimum aid to efficiency.

It is these considerations which render so thoroughly outrageous the attempt, without any real consideration, to sneak into a piece of legislation dealing with a completely unrelated item a criminal and injunctive penalty on inclusion of any such clauses, even where the employer and the union are able to reach complete agreement on such a clause.

Limitations on welfare funds

In its application to welfare funds the section must be recalled as having originated as a legislative act of spite. No suggestion has ever been made, no testimony ever offered, no indication ever given that any of the welfare funds of the types which this section makes criminal have ever been injurious in any way to any valid Federal interest. It is impossible to see how this section can conceivably have any valid relationship to the objectives of the act "to provide additional facilities for the mediation of labor disputes affecting commerce, to improve the procedures of collective bargaining, to improve the procedures of collective bargaining, to equalize legal responsibilities of labor organizations and employers * * *. No law exists outlawing welfare or insurance funds under the sole control of employers where workers' contributions are deducted by the employer for addition to such fund. No slightest suggestion has ever been given of any evil experience with funds under control of employees.

The section originated last year solely as a reaction of spite and venom confined to a particular situation. But it takes no account of, gives no heed to, the many long-established, soundly functioning, highly appreciated welfare funds which it is perfectly willing to sweep aside and outlaw on the basis of no justification other than dislike for a particular individual.

The proposal is inconsistent both with free enterprise and free collective bargaining. It ignores the fact that there are many varied types of employer-supported welfare funds. In some, union administration predominates. In others, employer administration predominates. In still others, there is joint administration. These funds are part of an evolving pattern in industrial relations. The welfare objectives which they subsidize have become increasingly important to trade unions and their members. For every mature trade union must inevitably concern itself with the health and welfare of its membership. Congress has now decreed that these funds, when they are supported in whole or in part by employer contributions, can be administered in one way and in one way only—with equal participation by the employer. And they are to be administered that way regardless of the wishes of either employer or employees, regardless of the fact that a different and more satisfactory form of administration more adequately meets the needs of a particular situation, regardless of the fact that the prescribed form of administration might be unwise and impracticable. An employer may make a sober judgment that he wants nothing to do with the administration of the welfare funds which he supports financially. Many employers have in fact made that judgment and have adopted the view that it makes for better labor relations not to share responsibility for such a fund.

Constitutionality

There is one general consideration which applies to this section, both in its effect on welfare funds and in its effect on the check-off. It is an accepted constitutional principle that the exercise of Federal authority must be based on some minimum showing of a reasonable relationship between the prohibition or restriction imposed and some legitimate Federal objective.

What is supposed to be the evil to which this section is addressed?

Has there been a single word said, a single line of proof offered, a single instance cited to establish any objection based on experience to the welfare funds now operative by agreement with the employer under exclusive union control? Has a single employer appeared before this or any other Congress and stated that this or that is wrong with such plans and creates a condition requiring Federal action?

With respect to the check-off prohibition, has a single iota of proof of evidence been offered to indicate any evil requiring Federal action? Is there anything before this committee, has there been anything before any other committee to suggest in the slightest that a convenient method for payment of union dues is anything other than a benefit and a virtue in the collective bargaining relationship?

Has the constitutional guaranty of due process—requiring that Government power be exercised on some reasonable foundation—been so far relegated to the ash heap that Federal legislation outlawing this type of contract, barring that type of action, prohibiting this and restricting that, may be offered and seriously considered simply on the whim of an individual member of a group of Members of Congress who have some personal aversion to the institution in question?

The Constitution of the United States requires more than that.

IV. SUPERVISORY EMPLOYEES (TITLE II, SEC. 202)

Section 2 of S. 55, eliminates from the protection of the National Labor Relations Act, certain groups of workers designated as "supervisors." Some comment will be in order on the scope of the categories of workers included under this head. More basically important in the first instance, however, is the fact that the section, which is part of a bill whose purpose is supposed to be the promotion of industrial peace, actually invites and will promote widespread strikes and industrial strife.

The purpose of the National Labor Relations Act is to ensure that the self organization of employees will be protected and to offer legal machinery for determining employee representatives and for securing by peaceful means employer recognition of duly designated representatives.

The proposal in this bill expressly preserves the right of supervisors to organize into unions and bargain with their employers. What the section proposes to do is to compel the supervisors to strike in order to obtain what the law freely guarantees to other employees.

This is not idle speculation. The National Labor Relations Board originally decided that foremen are entitled to the protection of the National Labor Relations Act. In the Maryland Drydock case, the Board reversed itself and denied the protection of the act to foremen. This did not prevent foremen from joining unions. There was a substantial growth in foremen's unions in 1943 and 1944 after the Maryland Drydock decision. But during that period foremen's unions were forced to exercise self-help in order to assert their right of association and were compelled to conduct a series of strikes which rocked the country in order to obtain recognition from employers.

This section would again introduce chaos into mass-production industries. It would again compel supervisory employees to use economic weapons to secure recognition from employers because they would no longer be able to invoke the peaceful machinery of the act.

This section involves a further consequence. Employers will not merely refuse to bargain with unions of their supervisory employees: they will discharge supervisors who attempt to join unions. This section, in short, invites industrial warfare and the use of the employer's economic power against individuals seeking to exercise the right to join a union. By inviting such discrimination, the section threatens an evil far beyond its apparent intention. Since the provision permits discrimination against certain employees, its inevitable effect will be to create an atmosphere in which all of the employees, not merely supervisory employees, are intimidated. What employee will feel free to join any kind of union when he sees that supervisory employees suffer mass discharges

simply because they join a union of their own choice? In short this section will seriously undermine the basic protections of the National Labor Relations Act for nonsupervisory employees as well.

This section is based upon the specious argument that unless a line is drawn between employees and supervisors, labor organizations will divide the supervisor's loyalty to management and interfere with his functioning. This is precisely the same argument that was made by powerful corporate American employers when the Wagner Act was first passed. These employers argued that a worker could not be a member of a union and a faithful employee at the same time and that his obligations to management were inconsistent with union membership. More than 10 years of successful functioning of the Wagner Act has exposed the hollowness of this cry of "management's rights."

The evils of the proposals are further multiplied by the sweeping definition set forth for the term "supervisor." The term is defined at two different places in S. 55 (sec. 202 (b) and sec. 301 (10)). The two definitions are not identical although both are equally subject to the comment that they include in their scope far more than the traditional concept of supervisory personnel.

As defined in section 202, "supervisor" is made to include many job classifications and many hundreds of thousands of workers who exercise no supervisory functions whatsoever and who have without dispute received protection under the act long before current controversies over the rights of foremen arose.

Thus the term is not restricted in its definition to those with power to hire, discharge or discipline. It is defined to include clerical and stenographic workers who may be involved in the making of reports of various kinds. It is defined to include plant guards, patrolmen, health and safety personnel of all ranks and degrees. It is defined to include inspectors on the assembly line, time-keepers, time clerks, and dozens of other related occupations.

These are provisions typical of the technique of blowing up in public discussion a single issue—in this instance the rights of foremen—while actually proposing the enactment of sweeping measures which include in their dragnet effect rights of individuals far beyond the scope of any legitimate conflict of viewpoints.

V. SUITS AGAINST UNIONS IN FEDERAL COURTS (TITLE II, SEC. 203)

Section 203 proposes the following:

(a) Suits based on collective bargaining contracts are brought within the jurisdiction of the Federal courts without regard to any of the normal jurisdictional requirements such as diversity of citizenship or a minimum amount in controversy.

(b) A union is made responsible not merely, as the present law provides, for those acts of its committee members and other minor or major officials which the union authorizes or approves, but, in addition, for any acts of such "agents" regardless of whether the specific acts were authorized or approved by the union.

(c) Permits suit against a union in any district in the country in which the union has any such "officers or agents."

(d) Declares that any employee who participates in a strike in violation of an agreement and without approval of the union shall lose his status as employee under the Wagner Act.

It should be remembered that this proposal is usually offered on the pretext that its purpose is simply "to make unions suable" so that their collective bargaining obligations may be enforced against them.

In this formulation the proposal is based upon two assumptions, both of which are completely false and carry implications completely unfair to labor.

Unions are subject to suit today

It is untrue to imply that unions are not at present subject to suit for violation of their contract obligations. In every State they stand in at least the same status as any other unincorporated association. In some 24 States specific statutes outline a procedure for direct suit against union by name or by suit against specified officers. In other States common law doctrines formulated by court decisions subject unions to suit under appropriate procedures.

Proposal is really to enlarge Federal jurisdiction

In legal effect, the proposal embodied in this section is not a proposal to make unions suable—since for that purpose no action is needed. It is a proposal to enlarge the jurisdiction of the Federal courts, to convert these courts into forums cluttered with matters only slightly above the level of the police court. For no

apparent reason the proposal sets aside the requirements which normally apply to all other contracts and to all other parties on the question of whether suit may be brought in the Federal court. It declares that regardless of the amount involved, regardless of the state of citizenship of the parties, virtually all collective bargaining issues may be tossed into the Federal courts.

Indeed, in their anxiety to make sure that the sweep of the enlarged jurisdiction of the Federal courts would reach to every corner and crevice in our industrial relations structure, the authors of this section were not even content to limit it to contract issues affecting interstate commerce or even to contracts affecting individual employers engaged in interstate commerce. The suits involved are to include any contracts where the labor organization involved represents "employees in an industry affecting commerce." In the National Labor Relations Act, jurisdiction is determined by the possible affect on commerce which might flow from a labor dispute. Under the Fair Labor Standards Act, Federal jurisdiction turns on the activities of the individual employee. As far as the sponsors of the present bill are concerned, however, the employee may be the porter who sweeps the premises at night but the Federal court has jurisdiction if the union representing the porter happens to be a labor organization representing employees in an industry affecting commerce.

We shall not burden this brief with extended analysis of the interesting implications of so broad a sweep of Federal jurisdiction. What is significant is the almost irresponsible willingness of the proponents of this measure to disregard all realities if Federal court operation of constitutional limitation, of triviality of issues in their mad anxiety to sweep the entire collective-bargaining machinery of the Nation into the hands of the Federal courts.

It should be recalled that there have been, even among the sponsors of this bill, those who have recognized that it is inappropriate and irresponsible to legislate freely and sweepingly to bring into the Federal courts every minor altercation and scuffle that might take place on a picket line or a street corner. Great as may be the vindictive drive toward invoking against labor every agency and power of the Federal Government, such a provision has been recognized in most quarters as a move, entirely apart from its effect on labor, which actually imposes overwhelming burdens on the machinery of the courts.

Clearly, however, there is little difference even in degree between the proposal which would make disorderly conduct in connection with labor disputes throughout the United States a matter of Federal court action, and the proposal which would make all issues—however minor or major—arising under collective-bargaining agreements, matters for injection into already overburdened Federal courts.

It must be recalled that such a situation does not prevail with respect to any one of multitudes of other local transactions and contracts. It is not suggested that this result be brought about with respect to transactions of far greater national significance than most of the host of minor issues which may be expected to arise under the thousands of collective-bargaining agreements in this country. What is proposed is to carve out a huge body of potential local litigation, remove it from its locale in the courts of the various States and communities, and toss the entire mass into the lap of the courts of the United States.

There is an ironic contrast between this line of thinking and the vigorous support of States' rights usually made by the very same individuals who have been supporting the present section. There is an ironic contrast between the presence of this section in the Ball-Taft-Smith bill, while at the same time at least one of the major sponsors of this bill voiced strong objections to retaining the United States employment offices under Federal jurisdiction on the grounds that problems of the various labor markets throughout the country were essentially local and should be retained in the hands of local and State agencies.

Who are the contract violators?

The second false assumption underlying the campaign whipped up in support of this proposal is the assumption that unions and unions alone frequently violate collective-bargaining agreements. As we have already pointed out, if this were so, there would be and is adequate provision for suit in the State courts. But equally significant is the fact that the experience of this Nation, examined objectively and not through the distorted lenses of newspaper headlines, does not support any assumption that there is a record of union irresponsibility.

The Case bill of last year evolved out of the strike wave of the early part of that year. In not one of the major CIO strikes of 1946 was there a violation of a collective-bargaining contract or any other type of obligation. In contrast it

was the General Motors Corp. which rejected the award made by a fact finding board appointed by the President; it was the United States Steel Corp. which rejected a settlement suggestion of the President himself; and it was the Westinghouse Corp. which was denounced by two of our Nation's foremost labor experts for its provocative and unreasonable prolongation of the strike.

It should be realized that every one of the thousands of arbitration awards each year which uphold union grievances is a decision that an employer has violated a contract. On the record, therefore, there are hundreds of proven employer violations for each alleged union violation.

Labor unions do not urge these facts as a basis for any legislative proposal to make lawsuits against employers more frequent in labor relations. What is significant is that these considerations indicate that supporters of proposals such as that contained in this section of the bill are seeking mainly to establish a false public impression unfavorable to unions. We do not seek to create a counterimpression nor do we seek counterlegislative proposals because it could not seriously be disputed that whether a union or an employer is a contract violator, court litigation will not establish good labor relations.

The proposal is really an attack on good collective-bargaining relations

Anyone familiar with labor problems recognizes that a lawsuit over a collective-bargaining agreement is the simplest and most effective way to destroy harmonious labor relationships. Employers and labor organizations with a bona fide desire to live in peace and harmony strive in every way possible to free themselves of legalistic technicalities. That is why collective-bargaining contracts have developed so extensively the details of the grievance machinery and arbitration as a sensible and expeditious way to settle the hundreds of problems that may arise each week and month in the administration of a labor contract in a large plant.

There can never be good relations between an employer and a labor organization if a lawsuit is the end product of breach of a collective-bargaining agreement. Those who would invite the parties to a collective-bargaining relationship to substitute for the grievance procedure resort to lawsuits must be condemned as disrupters and troublemakers.

A step toward Federal incorporation

There is still another significant consideration to be recognized in the effect of this law.

It establishes the union as a legal entity in the eyes of the Federal court, without regard to and without conformance to the form, status, and procedure which may be prescribed by the respective State jurisdictions. In substance it gives to the unincorporated associations which are labor unions a special type of federally created status. It is a long and significant step in the direction of Federal incorporation. It is a step which is in no way matched by any similar movement with respect to corporations. It is a step which is subject to all of the frequently voiced and well-recognized objections to Federal incorporation.

Unions subjected to harassing litigation in remote districts

Two of the detailed and purportedly "incidental" provisions of this section of S. 55, substantially exposed to the true effect of this section. One of these is the subdivision permitting suit to be brought against a labor organization not merely in the judicial district in which it maintains its principal office but in any district in which its "officers or agents" are located. A clearer invitation to widespread harassment of labor organizations can scarcely be conceived. Any national union has groups of members organized into locals throughout the country, many in isolated areas far distant from the main office of the organization. Each of these local groups, their committees, their minor officials, may for some purposes, be deemed to be acting for the entire organization. The provisions of this section permit the filing of lawsuits in any part of the United States where this may be the situation against the entire national organization. The national organization may be called upon to retain or dispatch counsel, prepare evidence, try lawsuits in all these parts of the country at the whim of the employer who may wish thus to drain the union's treasury.

Unions made liable for unauthorized acts

The other provision which substantially exposes the true effect of this section of S. 55 is that which makes the union responsible for the acts of its "agents" regardless of whether those acts have been specifically authorized or approved.

There is a long history of legal doctrine on this subject, dating back to a period in which the very existence of a union was regarded as a "conspiracy." Any

action by any member or minor officer anywhere could be treated as an act in furtherance of the conspiracy and all of the members made to suffer upon the theory that they all were engaged in the "conspiracy."

This character of thinking made it relatively easy to destroy unions. It was relatively simple for an employer to plant in the union ranks an agent whose function would be to provide and instigate activities which might later become the subject of attack upon the union treasury.

It was because of a background of this nature that the Norris-LaGuardia Act in section VI (29 U. S. C. A., sec. 106) declared that unions were not to be regarded as responsible for any acts other than those actually authorized or approved or ratified. It is this rule which the present section of the bill proposes to alter.

Even in the absence of an employer spy, it must be realized that a section attempting to impose liability on unions in the act of any "agent" is grossly unfair. Any truly democratic union has an extremely large number of "agents." Grievance committeemen are authorized agents in the negotiation of grievances. Locally elected officers are authorized agents for the administration and leadership of their locals. Dozens of committees of union members exist for various purposes in each local union. During a strike there are picketing committees, food committees, negotiating committees, and many others.

It has always been the aim of antiunion employers to seek to attack the union or to tie up the union's funds on the basis of any minor altercation or scuffle on a picket line, or on the basis of some minor infraction or similar action by an individual member or local grievance man. This section would now make that possible.

As a matter of fact, the section is particularly ironic in the light of the frequent insistence by many of the same groups which urge provisions of this type, that there is insufficient democracy in American unions. The simple fact is that the more democracy there is in a union, the more "agents" the union necessarily has. Such a consequence is extremely desirable. But, if the financial responsibility of the union is to be expanded to include liability for actions of all these "agents," even when the acts are not authorized or ratified, then this bill is actually encouraging and insisting that, in self-protection, the union impose greater centralization so as to confine authority and agency only to the highest and most restricted levels of leadership. That is contrary to the principles of democratic unionism and should be regarded as contrary to the principles of desirable public policy.

Proposed penalties on wildcat strikes actually hit innocent union

Finally, sponsors of this section apparently decided to take no chances on missing any possible opportunity for impeding and weakening employees and their organizations on the pretext of enforcing contracts. A final clause in the proposed section declares that where an employee participates in an unauthorized stoppage he "shall lose his status as an employee" for "purposes of the National Labor Relations Act."

There is an almost Machiavellian cleverness about this clause. It presents an appearance of seeking merely to protect unions against stoppages which they themselves do not authorize. It creates an impression that the sole penalty is aimed against the offending employee.

Many union contracts now provide that an employee who engages in a stoppage in violation of contract may be discharged as a penalty. This is a clause of a type which may be quite sound where an employer and a union feel that a collective bargaining relationship is such as to make such action a desirable means of enforcement. A statutory approach which irrationally assumes that such a penalty is necessary and desirable in all instances and under any circumstances would be in itself dangerous and undesirable.

The proposal, however, goes far beyond even that. It penalizes not merely the employee, but also the very union against whose orders the employee is rebelling. The proposal specifically includes a loss of status as an employee under section 9 of the National Labor Relations Act. Presumably, therefore, if a majority of the employees at a given plant strike in violation of union policy then they lose their status as employees in determining representation and the union loses its collective bargaining rights.

VI. OUTLAWING OF SECONDARY BOYCOTTS (TITLE II, SEC. 204 (A) (1))

Section 204, although it carries a heading referring to boycotts, actually goes far beyond secondary boycotts alone. In a subsequent heading we shall discuss other portions of this same section, particularly as issues arise under subdivi-

sion 2 of section 204 (a). For purposes of this subdivision of our memorandum we direct our attention to the application of this bill to the so-called secondary boycott.

In this connection, the section would outlaw any contract or combination which had for its purpose either a strike or a concerted refusal of employees to handle or work on certain types of articles or materials if the intent of such action is to require the employer to cease using or otherwise dealing in the articles or materials in question.

Stated more simply and plainly this section would make it a crime for a group of employees to refuse to handle materials produced under substandard working conditions, under nonunion working conditions, or under any other conditions which the employees might consider to constitute a threat to their own standards and working conditions.

This is not a new issue suddenly discovered in the year 1947 by Senators Ball, Taft, and Smith or even in the year 1946 by Congressman Case. It is not an issue which has any special or overwhelming significance in the postwar period so as to inspire a sudden clamor for legislation.

On the contrary not one of the major strikes which supposedly constitute the background against which the cry for legislation has been built involved a secondary boycott. It is doubtful whether more than 1 percent of the workers involved in strikes during the year 1946 were involved in situations coming under the head of a secondary boycott.

If we examine the validity of the secondary boycott on its merits we must conclude, as President Truman did in his message on the state of the Union, that there are very many situations in which a secondary boycott is a thoroughly legitimate and proper measure for economic self-protection on the part of a group of workers.

Many of the early struggles in the labor movement centered around the protest against working upon or using materials produced by nonunion manufacturers or under nonunion conditions. Over many decades the Supreme Court of the United States has recognized and pointed out that the valid interest of a group of workers in their own welfare extends far beyond the limits of their own relations with their own employers. The competition of employers working their employees under substandard conditions is a constant threat to the maintenance of the standards of employees in other establishments who have succeeded in bettering their conditions.

The employer who operates on the basis of wages and working conditions below levels achieved in competitive establishments offers a constant competitive threat to the employer who offers decent conditions to his workers. Can it be said that those employees who have achieved reasonable conditions may be required by law to make their services available in aid of and on the product of a sweatshop employer?

There was a time in our history when the labor movement was faced with repeated injunctions issued by Federal courts against this type of self-protection. Mounting protests led to the enactment in 1914 of the Clayton Act which declared that, "the labor of a human being is not a commodity or article of commerce." The Clayton Act did not succeed in eliminating the abuse of judicial power. Injunctions against the so-called secondary boycott continued to be issued and were upheld over vigorous dissents by such eminent jurists as Justices Brandeis and Holmes in the two famous decisions of the United States Supreme Court, in the *Bedford Cut Stone Workers and Duplex v. Deering* cases. It was these decisions which gave rise ultimately to the Norris-LaGuardia Act of 1932 which made clear and certain once and for all that the Federal injunction power was not to be used as a means of interfering with a peaceful refusal of a worker or group of workers to make their services available.

This section today is therefore not a new suggestion. It is a reactionary suggestion in the truest and most accurate sense of the word. It is a suggestion that the clock be turned back several decades to undo the progress symbolized by the Clayton and the Norris-LaGuardia Acts.

It should further be recognized that the proposal contained in this section is not at all the same as that proposed by President Truman in his message on the state of the Union. The President expressly recognized that most of what this section would outlaw is thoroughly legitimate and proper conduct. The President's proposal was very sharply limited to apply to restrictions only upon the use of the boycott weapon as a means of compelling an employer to deny recognition to the organization which is duly designated by his employees as their collective-bargaining representatives.

Section 204 (a) has as its avowed and patent objective to compel individuals to work against their will under circumstances specified in the section. It has as its purpose the requirement of forced labor upon pain of fine, damages, and injunction. The scope of the section necessarily includes the direction of similar sanctions against not merely a strike but all the activities in support of a strike such as picketing, the distribution of leaflets, and the like.

We must bear in mind that the repression which the section provides for is a form of repression directed not against activities evil in themselves; the right to picket, to distribute leaflets, are all fundamental rights. They enjoy constitutional status and constitutional protection. A serious constitutional issue would be raised by his legislation even if it were directed against activities which common experience has demonstrated to be improper. Here we are dealing with the efforts of workers to prevent the use of their labor to subsidize substandard or nonunion working conditions.

The history of labor in this country is dominated by the continuing and determined efforts of labor organizations to isolate and quarantine products produced under substandard and nonunion conditions. It cannot seriously be contended at this late date that this is not a legitimate form of concerted labor activity.

In view of the fact that the activities sought to be repressed enjoy an established and time-honored status, the attempt embodied in this legislation to repress it makes it peculiarly vulnerable to constitutional challenge. These activities, otherwise privileged under the Constitution, cannot be stripped of that privileged character by legislative fiat. No basis exists for the wholesale and indiscriminate denial of constitutional rights contained in this section.

It seems appropriate at this point to stress the fact that throughout this legislation there is present a cavalier disregard of basic rights which enjoyed constitutional protection.

VII. OUTLAWING OF STRIKES WHERE WAGNER ACT PROTECTION IS NOT AVAILABLE (TITLE II, SEC. 204 (A) (2))

Section 204 is headed "Boycotts and other unlawful combinations." We have discussed above its application to so-called secondary boycotts. The portions of the section which deal with the "other unlawful combinations" opens a veritable Pandora's box of confusion and inequity.

The section would make it unlawful to make any contract or engage in any combination whereby it is proposed by strikes or by similar concerted action to require an employer "to recognize, bargain with, or comply with the demands of a labor organization under the provisions of the National Labor Relations Act to recognize or bargain with such labor organization."

This language may be restated in simpler and blunter terms as follows: If an employer is not required under the provisions of the National Labor Relations Act to recognize or bargain with a labor organization representing certain of his employees, then it is a crime for those employees to seek recognition or—even without recognition—to seek to bargain concerning any issues or to present any demands to the employer.

Brought down even more sharply into practical terms, this would affect certain specific situations, as follows:

(1) The employees of an employer have commenced self-organization. They have not as yet had an opportunity to establish their majority representation rights. The employer discharges several of them for union activities, or institutes a sharp wage cut, or imposes certain intolerable conditions of employment. The organization into which the employees are organizing seeks to prevent the wage cut or to protest the unfair discharge. The organization may be seeking no recognition, and may be perfectly content to await legal determination of its status: it is seeking merely to maintain the status quo as to working conditions. Since the employer is not required by law at this point to recognize the organization, the proposed bill makes any effective effort by the employees to protect themselves a crime.

(2) The employees in a particular department, a single plant, or a particular craft may be fully organized. The employer, however, is resisting recognition and litigating the issue before the NLRB in a dispute over what is the appropriate unit. Pending all the delays involved in this, the employer institutes wage cuts, changed working conditions, etc. The employees are powerless to defend themselves because the proposed bill would say that any strike or similar self-protection on their part would be criminal.

(3) Some workers are excluded from the benefits of the Wagner Act completely. For example, many workers who perform services in large-scale industrial-type establishments are nevertheless excluded from the benefits of the act because they are viewed as "agricultural" workers. Under the law at present they are fully entitled to organize for their self-protection and to exercise their right to strike on the same level as any and all other types of workers. Denial to these workers of the protection of the Wagner Act is in itself quite unfair since it denies them the normal legal remedies for securing recognition, leaving them only their own economic remedies. The proposed bill, however, would compound the inequity even further by saying in effect that the very fact that they are already denied special remedies available to other workers is to be made the basis for handicapping them still further by denying them even the remedy of self-protection.

(4) The inequity indicated in the foregoing would be made applicable to other groups of workers by virtue of additional exclusions proposed in this very bill. It will be recalled that section 202 of the bill eliminates large groups of workers, including many improperly designated as "supervisory." Section 202 pretends to do nothing more than eliminate the employer's legal duty to recognize representatives of these workers and purports to retain for these workers their right to join unions. Taken in conjunction with section 204, however, the bill would remove from these workers both the protection of the law and the protection of their own organized strength.

(5) There are innumerable instances in which the majority representation rights of a group of employees is factually perfectly clear. The employer, however, undertakes a series of dilatory and legalistic moves calculated to postpone for many months and even years his compliance with his duty of recognition. He may raise fringe technicalities as to the exclusion or inclusion in the unit of minor groups of workers. He may use this as a maneuver for refusing in the meantime to meet with the union and consider problems relating to the main body of his workers. The proposed law would make criminal any effort by those employees—even if every single one of them to the last man clearly desired representation by the organization—to undertake to bring about recognition and negotiation on their pressing and immediate problems.

* * * * *

There is a deceptive implication in the formulation of this section which has led to some confusion. It should be noted that the section does not say that where an employer has an affirmative legal duty to recognize a given labor organization, it is to be unlawful for a rival group to seek to compel the employer to do that which is illegal, namely, withdraw recognition from the properly designated group. Such a proposal would have been in accord with the suggestion of President Truman in his economic report of January 8, 1947. But that is not what the section proposes.

The section is not worded to outlaw activities calculated to induce employers to violate their legal obligations. It is worded to outlaw efforts to compel the employer to bargain unless he is already legally compelled to bargain. It so happens that there are many things beyond what the law already requires which the employees should, and do, have a perfectly proper moral and equitable right to seek from their employer. In fact, it is fair to say, as some of the instances given above will show, that in many cases it is precisely because the law fails to give protection to certain groups or fails to give adequate protection under certain circumstances that it becomes necessary for the employees to resort to their own economic strength. This law would say that precisely where the employees' efforts at self-help are left as the only available remedy, those efforts are to be outlawed.

VIII. REGISTRATION OF UNIONS (TITLE II, SEC. 205)

Section 205 of the bill would declare that labor unions are to be made ineligible for certification under the National Labor Relations Act unless:

(a) They file with the Secretary of Labor a report containing information regarding officers and their election, expenditures for compensation of employees and officers, initiation fees and dues, employers with whom they have collective-bargaining agreements, etc;

(b) They file with the Secretary of Labor a report of receipts and expenditures; and

(c) They file annual reports bringing up to date information under the foregoing headings.

The Secretary of Labor in commenting on this proposal pointed out that it is already the practice of almost all major labor organizations to prepare and distribute regular reports on finances. Within the CIO almost all of the unions provide for regular audits by a certified public accountant and have their financial reports available to anyone who wishes them, while the remainder have the reports fully available to local unions and members.

The Secretary of Labor further pointed out that under section 117 of the Revenue Act of 1943 unions are already filing with the Treasury Department returns setting forth financial information. The Secretary noted that insofar as any collection of information is concerned the bill does little more than provide for the creation of a new bureau for a collection of documents which can serve no legitimate function whatsoever.

On the other hand the proposal does embody the first step—and a very long step—toward a denial of the voluntary and unincorporated status of labor organizations. Through these organizations workers are exercising their constitutional right of freedom of assembly and have established the only effective means of exercising their individual right of free speech. Legislation which seeks to condition the functioning of labor unions upon the filing of reports or upon the taking of other similar steps arbitrarily dictated by legislative fiat, is predicated upon a theory which may well lead to Government domination and direction of labor unions. It is a theory which can make labor unions merely creatures of the state, whose existence and operation is dependent on governmental approval or disapproval. This theory is offensive to some of the most basic traditions of America both in the trade-union movement and in other fields of action. It is a theory which is in distinct violation of rights guaranteed by the Federal Constitution.

CONCLUSION

An understanding of the true scope and effect of the various sections of this bill speaks for itself as to the general impact of the set of proposals which it contains. The bill fits very clearly into several patterns of deceptive and destructive thinking which characterizes so much of the antilabor proposals of this and previous sessions of Congress. It accepts without argument the premise that labor unions, regardless of the merits of their operation, the merits of their economic role, or any other considerations, must be weakened. We will not undertake to debate in this legal analysis the economic considerations which indicate that labor today is among the few remaining forces of the plain people of the land speaking up and acting to resist the depredation of an increasingly strong and arrogant concentration of control in the hands of powerful industrial and financial monopolies. We will not undertake to debate the economic considerations indicating that labor's fight for a better distribution of purchasing power in the hands of the common people is truly a struggle for the essential preservation of our economic system. If, however, these considerations are to be disregarded, then it is essential in all frankness that the bill restate and reformulate its title so as to make clear that what it seeks is such a weakening of labor unions as to require that the unions yield in all respects to the demands and dictates of their employers.

If we are to be frank as to the impact and purpose of the bill, it should further acknowledge the extent to which it seeks merely a revision of American history. A long and bitter struggle of many decades produced the Clayton Act and the Norris-LaGuardia Act. A long and bitter background of conflict and bloodshed led to growing recognition that Government should not permit itself to be dragged into allowing the use of its forces to break strikes, to beat down American workers, to reduce wage rates, to strengthen and fortify the employer at the collective-bargaining table.

These are issues debated and resolved over many years. What is reflected in the present bill, as in many of its counterparts, is merely an insistence that the labor laws of this nation must remain a political football to be kicked back and forth with variation of fortunes in the political arena.

The bills reflect an insistence that the decisions of history be rejected. Even such fundamental declarations as that contained in the Clayton Act declaring that the labor of a human being is not a commodity, is apparently not free from continued attack. Even such minimum standards as those of the Norris-La-

Guardia Act declaring that the Federal injunction should not restrain peaceful strike activities, or that the Federal injunction should not issue without notice and open hearing, are not free from continued efforts to reestablish government by injunction.

This bill, like so many of its counterparts, can be explained at least in part as the product of a lack of direct personal familiarity with the collective bargaining process and with the realities of employer-employee relationships. No other factor, short of a conscious aim to disrupt, could explain some aspects of the cooling-off provisions, provisions relating to suit under collective-bargaining contracts, and others.

The bill basically is not at all calculated to promote industrial peace as many of its sponsors insist. Its major effect will be the provocation of uncertainty and unrest, the disruption of growing trends toward stabilization of collective bargaining relations and substantial undermining of the sound functioning of the American labor movement.

MEMORANDUM ON BALL BILL (S. 133) PROHIBITING NATIONAL LABOR UNIONS

(Submitted on behalf of Congress of Industrial Organizations by Lee Pressman, general counsel)

This bill outlaws any common action or consultation by the employees of any two employers in the same industry unless those employers are located within 100 miles of each other. It accomplishes this result in two ways:

(1) It amends the National Labor Relations Act so as to make it an unfair labor practice for an employer to bargain collectively with a union if the same union also represents the employees of any other employer in the same industry who is not located within the same "labor market area." In addition, the bill makes it an unfair labor practice for a labor union to seek to act as the representative and forbids the NLRB to certify the union as the representative of the employee of two employers in the same industry if the employers are not located in the same "labor market area." "Labor market area" is defined to mean a single metropolitan or other geographical area no more than 100 miles in radius.

(2) In addition to the foregoing, the bill would make it unlawful for any labor organization—

(a) To attempt to compel any constituent unit or any other union to seek the inclusion of any particular terms or provisions in a collective-bargaining contract, or

(b) To enter into any contract or combination with any of its constituent units or with any other labor organization whereby the participating organizations agree to seek the inclusion of any particular terms or provisions in their respective collective-bargaining agreements.

In addition, employers would be forbidden to bargain collectively through any group, committee, or association of employers in the same industry unless all are located within the same labor-market area.

These various prohibitions are enforced by injunctions, with all provisions of the Clayton Act and the Norris-LaGuardia Act declared inapplicable.

THE BILL OUTLAWES NATIONAL UNIONS

Much of the clamor of certain sections of industry in support of this proposal has been based on a rallying cry calling for the elimination of "industry-wide collective bargaining" or the elimination of "labor monopoly." What the bill actually accomplishes is the outlawing of any and all national labor unions. It decrees that, if passed, labor unions must be either confined to a single employer or confined to a geographical area of 100 miles.

This would mean that in the automobile industry the employees of General Motors would be forbidden to be represented by the same organization, regardless of their desires, as the employees of the Chrysler Corp. Even if they belonged to different organizations the two organizations would be forbidden to meet with each other and agree on common programs with respect to wages, hours, and working conditions.

The employees of the Carnegie-Illinois Steel Corp. would be forbidden to select as their representative the same organization as the employees of the Bethlehem Steel Corp. As a matter of fact, in the present state of the law

it is probable that the employees of the Carnegie-Illinois Steel Corp. would be forbidden to choose as their representative the same organization as that representing the employees of the American Steel & Wire Co., even though both companies are subsidiaries of and under the control of a single entity, the United States Steel Corp.

RELATIVELY FEW INDUSTRIES HAVE INDUSTRY-WIDE BARGAINING

It should be remembered that in all these instances there is no industry-wide bargaining despite all the fanfare about that practice. True industry-wide bargaining is found in only a relatively small number of industries, in most of which it is a matter of long tradition and experience and has operated as a stabilizing force.

Thus the Secretary of Labor in his appearance before the Senate Committee on Labor and Public Welfare listed as the industries in which bargaining takes place on a national or industry-wide scale the following: Elevator installation and repair, automatic-sprinkler installation, glass and glassware, pottery and related products, wallpaper, coal mining, stoves. Industries in which bargaining, while not national, takes place on a regional basis which is probably wider than the 100 miles permitted by the bill, are the following: Textile dyeing and finishing, fishing, food canning and preservation, leather, hosiery, longshoring, maritime, lumber, metal mining, most nonferrous metals, shoes, paper, and pulp.

INDUSTRY-WIDE NEGOTIATION PROMOTES STABILITY AND ORDER

In most of these, bargaining on broad industry-wide or regional foundations is an institution of long standing and one which has worked out exceedingly well from any point of view. The Princeton University industrial relations section, having conducted a study of the operation of industry-wide bargaining, concluded that wages determined by national bargaining produce results which are "more sensible and far-sighted, taking in the economic interests of the industry as a whole."

The Princeton study further concluded that—

"* * * Elimination of wage cutting has tended to stress efficiency of management as the most important factor in competition."

"* * * Concentration of the change in one industry-wide determination avoids the labor unrest and series of strikes that often accompany competition between firms in the timing of wage changes or competition between rival unions in exacting concessions from employers."

These are the facts established by experience in the main in those industries in which true industry-wide bargaining has taken place. These are facts clearly supported by any common-sense analysis of the process of collective bargaining.

If the policy of division and segmentation advanced by this proposal were to succeed it would promote the development of chaos and confusion, of variations in standards instead of uniformity in standards of wages and working conditions. If lower standards developed in one plant than in others, those employers who were as a result placed at a competitive disadvantage would inevitably try to equalize their wages and working conditions with those of their competitors. Such an effort would produce an epidemic of strikes throughout single units of the industry. Conversely, the employees in plants with more disadvantageous conditions would seek to remedy their inequality, which might be expected to provoke strikes in other units of the industry.

A major inducement for peaceful settlement of issues is the recognition by an employer that other employers will ultimately be required to settle on the same terms. A prohibition on industry-wide negotiations would destroy the economic pressure which makes possible uniform settlements. It would thus actually provoke and prolong strikes in the narrower areas to which the law would restrict negotiation.

Thus in its direct impact on those few industries in which industry-wide or regional negotiation has developed and flourished the bill involves an irresponsible disruption and destruction of collective-bargaining patterns developed over many years, patterns which in the main have been found constructive and stabilizing by both parties to the negotiations. As applied to major national industries in which collective bargaining has not been on industry-wide or national bases it impedes and disrupts the establishment of patterns and standards of uniformity which have in the past aided in the settlement of industrial conflict.

IS IT OUR NATIONAL POLICY TO INSIST ON COMPETITION IN WAGE CUTS?

This, however, does not state the full extent of the fundamental evil of this proposal. In its refusal to countenance any effort toward the establishment of uniformity in wage policy in any industry, the bill in effect advances the theory that our economy requires competition in wage cutting. It cloaks this objective in a fallacious analogy between the efforts of workers to organize into a common association, and combinations of manufacturers to fix prices.

Our economic system does in fact rest on the necessity for constructive competition and requires the prohibition of combinations of manufacturers to restrict production or otherwise prevent the normal operation of competitive factors. Never before, however, has any responsible group dared to advance the outrageous theory that we must insist that employers engage in competition in sweatshop conditions.

On the contrary, it has been our national policy to eliminate competition in wage rates, not to foster competition in sweatshop conditions. It has been the objective of our national policy to prevent the kind of competitive advantages which are sought to be secured at the expense of the health of the workers. It has been our national policy to further the establishment of uniform standards of compensation, to further the concept of equal pay for equal work. It has been our national policy to insist that competitive advantages be based upon improvement in efficiency, in organization, in technology, and in all the other factors which go into progressive productive policy.

IS LABOR A COMMODITY?

When the National Association of Manufacturers urges—and this bill echoes the sentiment—that a combination of human beings who join a labor organization to advance their conditions of work is to be compared with a combination of profiteers seeking to gouge the public by joint price policies, the NAM—and the sponsors of this bill—are seeking to turn the clock of history backward.

The thirteenth amendment to the United States Constitution declared that the labor of human beings could not be considered in the same category as pieces of property or chattels. In 1914 the Clayton Act laid down a principle which no one has dared openly to attack in the years since, namely, that "the labor of a human being is not a commodity or article of commerce." The sponsors of this bill today apparently doubt the truth of this principle.

ISOLATED LABOR VERSUS CONCENTRATED INDUSTRY

The basic effect of this proposal and, it would seem, the basic objective of its sponsors, lies in its effect on labor unions. The bill would literally take the labor movement as it exists today and slice it up into separate units each alone too weak and powerless to hope to deal on any plane of equality with their employers. This is particularly ironic when contrasted with the extent of concentration of controls in industry and finance. The report of the Smaller War Plants Corporation to the Senate Small Business Committee last year revealed that 250 of the largest corporations of this country now hold approximately two-thirds of all the usable manufacturing facilities in the Nation. Eight large banking groups in this country directly control approximately 100 of the largest nonfinancial corporations. Three of these banking groups control 7 of the 10 largest steel producers in America which account for nearly three-fourths of the total ingot capacity in the United States. It is in the face of this concentration, which was substantially increased during World War II, that this proposal to decimate the labor movement is now advanced.

The support of this proposal by the president of the General Motors Corp. is especially interesting. Last year there was much moaning and complaining that it was unfair and improper for the United Automobile Workers to conduct a strike against General Motors Corp. alone, without making similar demands on its competitors. This has been a standard complaint whenever wage or other demands have been made upon a single employer without the presentation of similar demands to his competitors. This year, however, the General Motors Corp. has apparently decided that it is not right and proper to present demands to a single employer, but that any other method of operation should be declared illegal.

Wendell Berge, Assistant Attorney General of the United States in charge of antitrust prosecutions—a man who knows about monopoly problems—recently said:

"The twin demands, 'hands off business' and 'curb labor' have long been the heart of the antidemocratic program of those who favor the corporate state. To say that labor unions shall be restrained while the march of monopoly is allowed to continue with result in the abandonment of industrial democracy. If industrial democracy is permitted to perish our proud heritage of political freedom cannot survive."

If the sponsors of this bill are sincere in their desire to combat monopoly, they might devote their attention to the staggering pace of concentration of control over our economic assets and resources. They should welcome, rather than thwart, the efforts of the workers of America to bring into democratic association ever larger numbers of working people as a means of spreading industrial democracy and giving the people a more effective voice in the framing of the economic destinies of the Nation.

MEMORANDUM ON BAIL BILL (S. 360) (AMENDING THE NLRA)

(Submitted on behalf of Congress of Industrial Organizations by Lee Pressman, general counsel)

S. 360, introduced by Senator Ball, is entitled "A bill to amend the National Labor Relations Act, and for other purposes." As a matter of fact this bill completely wipes out the existing act and within its framework creates an entirely new statute. This bill is sharply different in character and purpose from the existing Wagner Act.

We assume that the committee has this bill under long-range study and that it is not a part of the committee's immediate program. We submit herewith this short memorandum indicating the major features of the bill and will present to the committee at some later time a detailed brief analyzing all of its provisions.

SECTION 1. THE PURPOSE OF THE BILL

This section eliminates most of the important findings contained in the statement of purpose and policy of the Wagner Act. Particularly noteworthy is the deletion of the express purpose of the Wagner Act to promote the practice and procedure of collective bargaining. The preamble of this bill makes it clear that its purpose is primarily to compel employees to work against their will.

SECTION 2. STRIKE-BREAKING PROVISION

Section 2 of S. 360 amends the Wagner Act by depriving individuals on strike of the status of employees immediately upon an offer of reinstatement. No distinction is made in this section between employees who strike for economic reasons and those who strike because of their employers' unfair labor practices. However, section 10 of S. 360 makes every strike because of an unfair labor practice an illegal strike which may be restrained by an injunction.

The provisions drastically change the existing law, both with respect to economic and unfair-labor-practice strikes. Under the present law a striker retains his status as an employee until he is actually replaced by another employee. A mere offer of reinstatement does not deprive him of his employee status. The proposed amendment is a substantial revision of the Federal labor policy that an employer should not be empowered to discharge individuals for striking. In its treatment of the unfair-labor-practice striker an even more substantial change in existing law is proposed. Under the present law the unfair-labor-practice striker is entitled to reinstatement. He may not be replaced for the duration of the strike.

The proposed change in the law would make every unfair-labor-practice strike an illegal act. In other words, employees who strike because of the misconduct of their employer are to be placed in an inferior position to those who strike for a wage increase. The obvious effect of this provision will be to encourage unfair labor practices since it will place in the hands of employers an easy means of destroying labor organizations.

SECTION 2. ADDITIONAL CHANGES

Section 2 of S. 360 contains further attacks upon the existing system of protections contained in the Wagner Act.

It removes employer associations from the scope of the law by deleting an existing provision in the Wagner Act defining an employer to include anyone acting in the interests of the employer.

A second change in the existing law contained in section 2 of S. 360 is the exclusion from the protection of the Wagner Act of supervisors. This term is defined so broadly as not merely to include supervisors who have negligible duties but also to include large classes of white-collar workers whose duties are in no sense supervisory.

SECTIONS 3 AND 4. ADMINISTRATIVE CHANGES

These sections divorce the enforcement functions of the act from the investigative and fact-finding functions. It is the most extreme administrative proposal that has been made in connection with the Board by any responsible group concerned with administrative procedure.

Just as the substantive changes in the Wagner Act proposed by S. 360 have as their objective the weakening of the protections of the act so these administrative changes seek to weaken the effectiveness of the Board as an administrative agency. These sections strike at the heart of the Board's administrative procedure and would create the same kind of administrative diffusion which preceded the creation of the National Labor Relations Board and which the Congress expressly sought to avoid in setting up the National Labor Relations Board.

SECTION 5. UNFAIR LABOR PRACTICES BY UNIONS

Section 5 of S. 360 reintroduces into the law the theory that interference, restraint, and coercion by the unions should be made unfair labor practices. Such an amendment was rejected as long ago as 1935 on the ground that it is based upon an "erroneously conceived mutuality argument." It is unrealistic to argue that there should be a Federal law preventing unions from interfering with or coercing employees in the exercise of their rights under the Wagner Act. All of the arguments which have been made in the past against the provision still apply today. It would transform the Board into a gigantic police court and seriously divert its time and energies from the basic objectives of the act. It invites employers to engage in unfair labor practices and then raise alleged union unfair labor practices as a smoke screen for their own violations of the act.

A second provision of section 5 of S. 360 makes it an unfair labor practice for unions to refuse to bargain with employers. There is absolutely no need for such a provision. No major strike has ever been caused by the refusal of a union to bargain collectively. It is the primary function of unions to bargain collectively.

Here too, upon the basis of a nonexistent evil, the bill creates a means to enable employers to confuse National Labor Relations Board proceedings by making a countercharge that the union has refused to bargain.

SECTION 5. WEAKENING OF EXISTING WAGNER ACT PROTECTIONS

Section 5 of S. 360 redefines the obligation to bargain collectively so that the employer's obligation is merely "to meet at reasonable times to confer" with respect to wages, hours, etc. The existing definition of the bargaining obligation as a result of a long series of administrative decisions is clear, simple and easily understood. This new definition renders meaningless even the slender obligation that the employer has to deal in good faith with the union. He is no longer required to deal with the union in good faith. All that he is required to do is to "meet." If an employer goes to meetings and sits through them he has satisfied the obligation as written. The redefinition of the bargaining obligation is offered allegedly to clarify the fact that an employer is not required to make concessions. But as written this section provides that the employer cannot be required to make a counterproposal in order to show his good faith. Obviously, there is a wide difference between a concession and a counterproposal.

Section 5 of S. 360 also amends section 8 (1) of the act so as to prevent the Board from basing unfair-labor-practice findings upon any employer statement of views or arguments. It prevents the Board from interpreting such statements in the light of the employer's past conduct.

Finally, section 5 of S. 360 eliminates the existing sanction of the closed shop contained in the proviso to section 8 (3) of the Wagner Act. The Congress of Industrial Organizations memorandum on S. 105 applies to this provision.

SECTION 6. REPRESENTATION MATTERS

Section 6 of S. 360 contains a host of changes designed to weaken the existing power of unions and procedures under the representation and election provisions of the Wagner Act. Under section 6 the power of the bargaining agent is limited to representation for purposes of rates of pay, wages, hours, or other working conditions. The final phrase is substituted for the existing term "terms and conditions of employment." The purpose of this substitution is obviously to limit the agenda of collective bargaining so as to outlaw bargaining with respect to such matters as pension funds, health and hospitalization plans, and the like.

This section contains a further drastic alteration in the existing law in that it amends the existing law to provide that the individual employee may adjust his grievance without the intervention of the bargaining agent. Under the existing law the National Labor Relations Board gives the full right to the individual employee to present grievances but states that the bargaining agent may not be excluded when the grievance is adjusted. In this way the bargaining agent may protect the collective interest and see to it that the collective bargaining contract is not violated. Under the amendment proposed by section 6 of S. 360 the employer would determine whether the bargaining agent should be present and whether the grievance involved a violation of the terms of the collective bargaining contract.

Since the adjustment of grievances constitutes the major part of the union's functioning in a plant this provision is an extremely dangerous one. It makes possible the reintroduction into the law of individual bargaining with the consequent undermining of the strength and effectiveness of the bargaining agent.

Section 6 of S. 360 contains a series of further amendments to the act, the main purpose of which is to impose arbitrary rules on the Labor Board in the grouping of employees for purposes of collective bargaining. The design in all of these proposals is to atomize the bargaining relationship by forcing the employer to bargain with numerous and varying bargaining representatives. These proposals will not only improperly strait-jacket the Board and deprive it of administrative discretion but will promote industrial unrest by eliminating the stability which flows from bargaining with broad industrial units.

Section 6 likewise contains a provision permitting employer petitions in Labor Board elections and permitting petitions by employees who do not desire a bargaining representative but seek to unseat a bargaining representative. Here, as elsewhere in the bill, the primary purpose is to create machinery not to encourage self-organization but to outlaw it; not to encourage collective bargaining but to make it difficult.

This motive is likewise seen in the provision to prohibit the Board from eliminating from the ballot in elections labor organizations found to be company dominated.

There is a long line of court decisions to the effect that the coercion upon employee choice inherent in the company union cannot be eliminated short of a complete disestablishment of the company union. It is well recognized that the continued existence of a company union established by unfair labor practices thwarts the purpose of the act and makes possible continued unfair labor practices in the future.

It is accurate to say that this provision alone, wholly apart from all of the other destructive sections of S. 360, would make a shambles of employee free choice and of all of the protections of the National Labor Relations Act.

One final provision in section 6 requires brief comment. This section provides that "any person aggrieved" by a Labor Board certification can directly challenge it in the courts. If this section becomes law it would be possible in those cases in which the court granted a stay to delay bargaining for months and even years during the lengthy course of judicial proceedings to test the validity of certifications. Judicial review of certifications was rejected by the Senate and House committees when the Wagner Act became law because of the delays which

it involved. Today, certifications are reviewable in an unfair-labor practice proceeding. There is no sound reason why this practice should be altered.

SECTION 13. ANTISTRIKE PROVISIONS

Of the numerous provisions in the remainder of the bill stripping labor of existing protections and rendering the presently constituted Board less capable of functioning effectively, perhaps the most important are the provisions of section 13. This section reintroduces into the law the concept of the illegal strike.

Three types of strikes are made illegal:

1. Strikes to compel an employer to bargain collectively with a labor organization not certified as the employee representative under section 9 of the Wagner Act. Under this provision a union, even if it represented an overwhelming majority of the employees could not strike for recognition. Under the present representation procedure of the National Labor Relations Board between 6 months and a year elapses from the date a petition for election is filed until the date of certification. A union would be forced to undergo this delay and be powerless to strike to obtain recognition if this bill became law. Moreover, if the union did strike it would be an illegal act for which it presumably could be sued for damages. It could likewise suffer a decimation of its majority through a discharge of the strikers.

2. Unfair-labor-practice strikes: This provision would produce the anomalous result of making a strike forced by an employer's misconduct an illegal act while a strike for economic objectives would not be illegal. The obvious result of this provision would be to encourage an employer to engage in illegal acts in order to provoke a strike branded by the law as illegal.

3. A final provision makes illegal a strike to compel an employer to violate a provision of the National Labor Relations Act or some other law of the United States. The primary purpose of this provision is to protect employers who speedily form bargaining relationships with inside subservient unions when legitimate organizations seek bargaining rights. They invariably claim that to yield to such a demand would be to violate the Wagner Act. The primary purpose of this provision is to reinforce other sections of the bill affording legal protection for dominated organizations.

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Under this bill every section of the Wagner Act will be either substantially restricted in its protection or actually destroyed. It constitutes a legalized frustration of the process of self-organization and collective bargaining.

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